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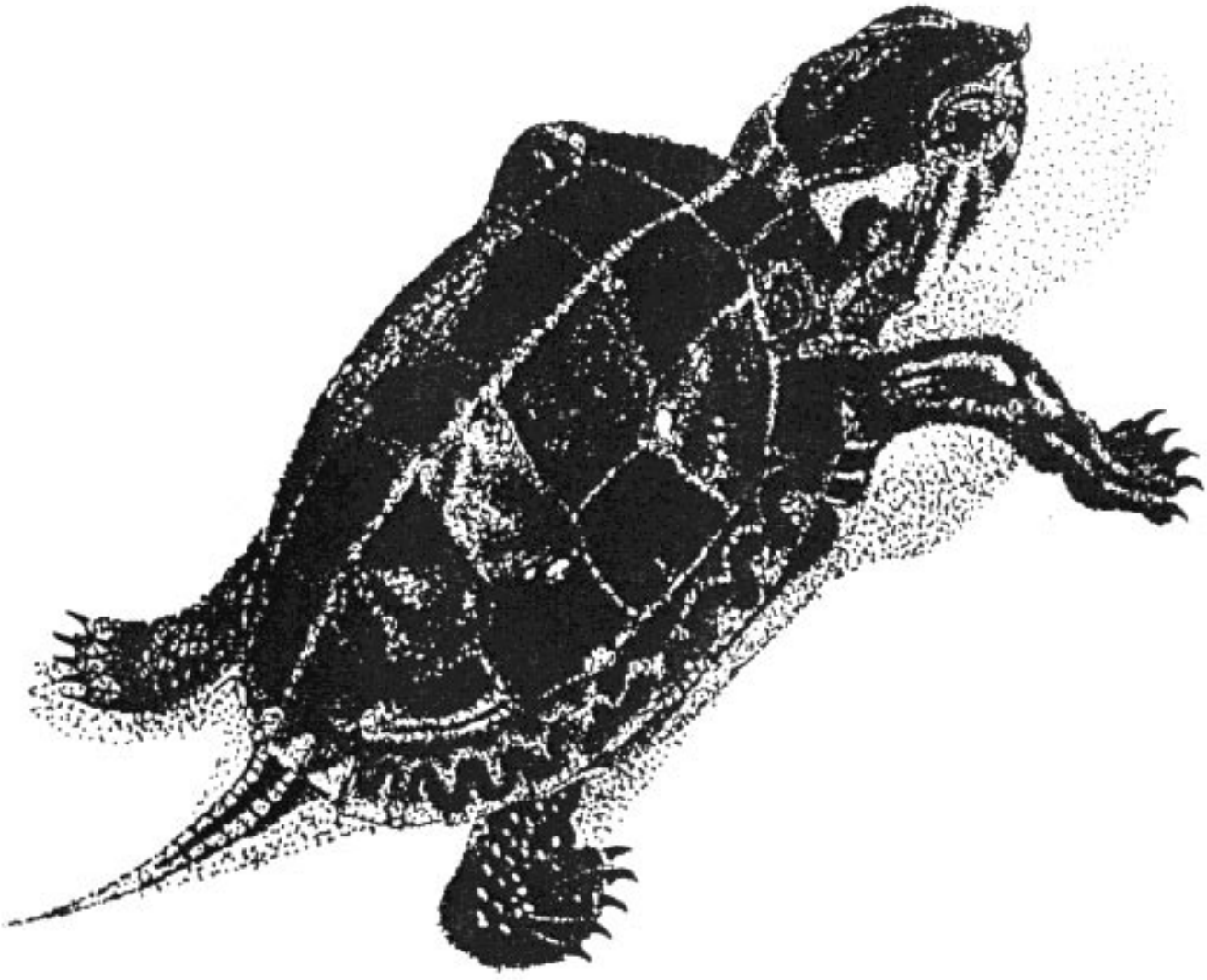

This month's front cover artwork:

Artist: *Robyn Phillips*

9th Grade

Grand Prairie High School

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

We will display artwork on the cover of each *Texas Register.* The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

For more information about the student art project, please call (800) 226-7199.

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a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569

Secretary of State - Antonio O. Garza, Jr.

Director - Dan Procter

Assistant Director - Dee Wright

Receptionist - Tricia Duron

Texas Administrative Code
Dana Blanton
John Cartwright

Texas Register
Carla Carter
Ann Franklin
Daneane Jarzombek
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Kelly Ramsey
Becca Williams

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Jill S. Ledbetter
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PROPOSED RULES

WITHDRAWN RULES

ADOPTED RULES

OPEN MEETINGS

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 113. Registration of Securities

7 TAC §§113.4, 113.11, 113.12

The State Securities Board proposes amendments to §§113.4, 113.11, and 113.12, concerning registration of securities. Specifically, §113.4(c) would be amended to conform the text to existing law by omitting a provision prohibited by the National Securities Market Improvements Act of 1996; §113.11(a)(3) and §113.12 would be amended to mirror the references to guidelines mentioned in each; and §113.12 would also be amended to remove a reference to Chapter 124, which is being currently proposed for repeal.

Micheal Northcutt, Director, Securities Registration Division, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Northcutt also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be that the rules would reflect existing law and persons registering securities would be apprised of the specific guidelines that may apply to their registered offering. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendments are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposed amendments affect Texas Civil Statutes, Article 581-7.

§113.4. Application for Registration.

(a)-(b) (No change.)

(c) Variable prices. The Commissioner cannot properly permit variable price approvals on primary sales. However, if good cause is shown, the Commissioner may permit variable pricing on firmly underwritten offerings [and on securities of investment companies registered under the Investment Company Act of 1940 as amended] or similar continuous offerings such as employee benefit plans.

(d)-(g) (No change.)

§113.11. Shelf Registration of Securities.

(a) Applicability.

(1)-(2) (No change.)

(3) Where appropriate, the provisions of Chapters 117, 119, 121, **129,** [and] 141 **, and 143** of this title (relating to **Administrative Guidelines for Registration of** Real Estate Programs; Publicly Offered Cattle Feeding Programs; **Administrative Guidelines for Registration of** Oil and Gas [Drilling] Programs; **Administrative Guidelines for Registration of Asset-Backed Securities;** [and] Administrative Guidelines for Registration of Equipment Programs **; and Administrative Guidelines for Registration of Real Estate Investment Trusts**) and other provisions of this chapter also will be applied.

(b) (No change.)

§113.12. Applicability of Guidelines.

The guidelines listed in this section do not apply to offerings made pursuant to an exemption under either the Texas Securities Act, §5 or §6, or an exemption by Board rule pursuant to the Texas Securities Act, §5.T, or to an offering of federal covered securities, as that term is defined in §107.2 of this title (relating to Definitions). In

other words, the requirements contained in one of the following guidelines would apply only to an offering for which an application for registration is filed with the Securities Commissioner:

(1)-(2) (No change.)

(3) Chapter 121 of this title (relating to **Administrative Guidelines for Registration of** Oil and Gas Programs);

[(4) Chapter 124 of this title (relating to Administrative Guidelines for Registration of Periodic Payment Plans);]

(4) [(5)] Chapter 129 of this title (relating to Administrative Guidelines for Registration of Asset-Backed Securities);

(5) [(6)] §135.5 of this title (relating to Registration of Bonds);

(6) [(7)] Chapter 141 of this title (relating to Administrative Guidelines for Registration of Equipment Programs); and

(7) [(8)] Chapter 143 of this title (relating to Administrative Guidelines for Registration of Real Estate Investment Trusts).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-9709987
Denise Voigt Crawford
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305–8300

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Chapter 114. Federal Covered Securities

7 TAC §114.4

The State Securities Board proposes an amendment to §114.4, concerning filings and fees. The proposed amendment would: (1) change subsections (a)(1)(A) and (f)(1)(A) to recognize new Form NF, Uniform Investment Company Notice Filing; (2) subsection (b) would add new paragraph (5) to explain filing and fee requirements for offerings of certain industrial bonds; (3) clarify when some filings and fees are due in subsections (b)(4) and (c); and (4) relocate two provisions of general applicability from subsections (b)(5)and (6) to subsections (g) and (i), respectively. Old subsection (g) would be eliminated as duplicative.

Micheal Northcutt, Director, Securities Registration Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to clarify filing and fee requirements and increase uniformity with other securities regulators by allowing certain issuers to file new uniform Form NF. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Articles 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

The proposed amendment affects Texas Civil Statutes, Articles 581-5 and 581-7.

§114.4. Filings and Fees.

(a) Generally. Unless otherwise provided in subsection (b) of this section, prior to the initial offer of the federal covered securities in this state, the issuer shall provide to the Securities Commissioner:

(1) a notice filing, verified under oath by the applicant, consisting of **:**

(A) page 1 of a Form U-1, Uniform Application to Register Securities, with items 1-6 completed, or a document providing substantially the same information; **or**

(B) if the issuer is an investment company, Form NF, Uniform Investment Company Notice Filing.

(2)-(3) (No change.)

(b) Special circumstances.

(1)-(2) (No change.)

(3) Money market status approved. **Section 123.3 of this title (relating to Conditional Exemption for Money Market Funds) sets forth the requirements for obtaining and maintaining a money market designation and the reduced fee schedule available to funds so designated.** In connection with an offering of securities of an issuer that has applied for and been granted money market status as provided in §123.3 of this title (relating to Conditional Exemption for Money Market Funds), the issuer shall provide to the Securities Commissioner:

(A) a consent to service of process signed by the issuer, if required by §114.3 of this title (relating to Consents to Service of Process), if such a consent to service has not previously been filed with the Securities Commissioner; [and]

(B) any other filing required by §123.3 of this title (relating to Conditional Exemption for Money Market Funds) or subsection (f) of this section; and

(C) [(B)] the fee provided for in §123.3 of this title (relating to Conditional Exemption for Money Market Funds).

(4) Secondary trading. A registered dealer or issuer who chooses to comply with the Texas Securities Act, §5.O(9), by filing a form that shall provide to the Securities Commissioner **, prior to the sale of the securities in this state** :

(A) -(D) (No change.)

(5) **Industrial development bonds. In connection with an offering of bonds that does not qualify for an exemption pur-**

suant to the Texas Securities Act, §5.M, because the securities offered come within the parameters of Chapter 135 of this title (relating to Securities Sold by Industrial Development Corporations and Authorities), prior to offers in this state, the issuer shall provide to the Securities Commissioner the items noted in subsection (a) of this section. This paragraph does not apply to bonds issued by a municipality located in Texas. [In conducting sales in this chapter, dealer and agent registration requirements of the Texas Securities Act and Board rules must be complied with.]

[(6) Applicability of antifraud provisions. With regard to this chapter, the Texas Securities Act prohibits fraud or fraudulent practice in connection with the sale or offer for sale of federal covered securities.]

(c) Supplemental reports.

(1) Unless otherwise provided in paragraph (2) of this subsection, each [Each] applicant required to pay a fee in connection with federal covered securities offered in this state shall submit to the Securities Commissioner annual reports showing the amount of federal covered securities authorized to be sold in Texas, the actual amount sold in Texas, the consideration received therefor, and the amount of unsold securities authorized to be sold in Texas. Upon completion of all offerings of federal covered securities authorized for sale in Texas, a final sales report must be filed with the Securities Commissioner showing the total aggregate amount of federal covered securities authorized and sold in Texas and the total consideration received therefor.

(2) This subsection does not apply to an applicant proceeding pursuant to subsection (b)(1) or (b)(4) of this section.

(d)-(e) (No change.)

(f) Period of effectiveness.

(1) The initial authorization for federal covered securities of an open-end investment company, as defined in the Investment Company Act of 1940, shall be effective until two months after the end of the issuer's fiscal year. After the initial authorization, the issuer or its agent may renew the authorization by submitting, within two months after the end of the issuer's fiscal year:

(A) a notice filing, **verified under oath by the applicant,** consisting of **Form NF, Uniform Investment Company** Notice Filing [page 1 of a Form U-1, Uniform Application to Register Securities, with items 1-6 completed, or a document providing substantially the same information]; and

(B) (No change.)

(2)-(4) (No change.)

(g) **Applicability of dealer and agent registration requirements. In conducting sales in this chapter, dealer and agent registration requirements of the Texas Securities Act and Board rules must be complied with.** [Money market fund determinations pursuant to §123.3. A fund offering federal covered securities that is determined to be a money market fund pursuant to §123.3 of this title (relating to Conditional Exemption for Money Market Funds) shall pay the fees provided for in that section.]

(h) (No change.)

(i) Applicability of antifraud provisions. With regard to this chapter, the Texas Securities Act prohibits fraud or fraudulent practice in connection with the sale or offer for sale of federal covered securities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Denise Voigt Crawford
Securities Commissioner
State Securities Board
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Chapter 115. Dealers and Salesmen

7 TAC §115.1, §115.3

The State Securities Board proposes amendments to §§115.1 and 115.3, concerning dealer/investment adviser registration. Proposed §115.1(b)(1)(M) would add a new category of restricted registration for dealing in all securities except municipal securities. A corresponding amendment is being proposed to §115.3(b)(1)(B)(vi) to accept the Series 37, 38, or 47 examinations for this type of restricted registration. These three exams, which do not address municipal securities issued in the United States, are NASD Regulation, Inc. versions of the Canadian and Japanese securities exams. Additionally, §115.1 would be amended to: require a registered person to report a bankruptcy; include the effective date of Title III of the National Securities Markets Improvement Act of 1996; and clarify the coverage of the exemption in §115.1(i)(2).

Michael S. Gunst, Director, Dealer Registration Division, has determined that for the first five-year period the rules are effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Gunst also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the facilitation of international trading of securities by dealers from Canada and Japan and improved clarity concerning reporting obligations and registration exemptions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendments are proposed under Texas Civil Statutes, Articles 581-28-1 and 581-12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.B provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule.

The proposed amendments affect Texas Civil Statutes, Articles 581-12, 581-13, 581-14, and 581-18.M

§115.1. General Provisions.

(a) (No change.)

(b) Restricted registration.

(1) Any person or company may apply for, and the Securities Commissioner may grant, restricted registration for the purpose of rendering advice regarding or effecting transactions in a particular type or category of securities, or securities representing interests in one or more types or categories of businesses. The restricted registrations are as follows:

(A)-(J) (No change.)

(K) registration to accept orders unsolicited by such person from existing customers of the dealer; [and]

(L) registration to deal exclusively in corporate securities **; and** [.]

(M) registration to deal in all general securities except municipal securities.

(2) (No change.)

(c)-(f) (No change.)

(g) Reporting requirements.

(1) Each person registered as a dealer or investment adviser or as an agent thereof shall report to the Securities Commissioner within 30 days after its entry any action by a self-regulatory organization, any state or federal administrative order, criminal conviction, or court judgment, order, or decree described in paragraph (2) of this subsection **or any declaration of bankruptcy,** which is entered against that person or an officer or agent thereof. Upon request by the Securities Commissioner, that person may be required to furnish to the Securities Commissioner copies of the order, conviction, or decree, or other documents, as applicable.

(2) The following matters must be reported:

(A)-(C) (No change.)

(D) any expulsion, bar, suspension, censure, fine, or penalty imposed by a self-regulatory organization; **and**

(E) (No change.)

(3) (No change.)

(h) (No change.)

(i) Persons not required to register as an investment adviser or an agent of an investment adviser on or after **July 8** [April 9], 1997 [, or such later effectiveness date created by act of Congress for Public Law Number 104-290, Title III].

(1) (No change.)

(2) Registration as an agent of an investment adviser **described in paragraph (1) of this subsection** is not required for an investment adviser agent who does not have a place of business located in Texas but who otherwise engages in the rendering of investment advice in this state.

(3) (No change.)

(j) (No change.)

(k) Applicability of antifraud provisions. **Persons not required to register with the Securities Commissioner pursuant to** [With regard to] subsections (i) and (j) of this section, **are reminded that** the Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by a dealer, investment adviser, or agent in connection with transactions involving securities in Texas.

§115.3. Examination.

(a) (No change.)

(b) Content. Each applicant must satisfy two examination requirements.

(1) Each applicant must pass an examination on general securities principles. This requirement may be satisfied by passing an examination on general securities principles administered by the NASD. As set out in subparagraph (B) of this paragraph, applicants for restricted registrations may substitute an examination dealing with a particular type of security for an examination on general securities principles.

(A) (No change.)

(B) In lieu of an examination on general securities principles, the Securities Commissioner recognizes the following limited examinations, administered by the NASD, for the corresponding restricted registrations:

(i)-(iii) (No change.)

(iv) for persons seeking the type of restricted registration specified in §115.1(b)(1)(B) of this title (relating to General Provisions), the Series 52 – Municipal Securities Representative Examination; [and]

(v) for persons seeking the type of restricted registration specified in §115.1(b)(1)(L) of this title (relating to General Provisions), the Series 62 – Corporate Securities Representative Examination **; and** [.]

(vi) **for persons seeking the type of restricted registration specified in §115.1(b)(1)(M) of this title (relating to General Provisions), either the Series 37 – General Securities Representative Examination, the Series 38 – General Securities Representative Examination, or the Series 47 – General Securities Representative Examination.**

(2) (No change.)

(c)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chapter 124. Guidelines for Registration of Periodic Payment Plans

7 TAC §§124.1-124.6

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Securities Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The State Securities Board proposes the repeal of Chapter 124, §§124.1-124.6, concerning guidelines for registration of periodic payment plans. The repeals are proposed in light of changes made by the National Securities Markets Improvement Act of 1996, Public Law Number 104-290, which remove most securities issued by open-end investment companies from the registration requirements of state law.

Micheal Northcutt, Director, Securities Registration Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Northcutt also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the elimination of unnecessary rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The repeals are proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The repeals affect Texas Civil Statutes, Article 581-7.

§124.1. Introduction.

§124.2. Suitability Standards.

§124.3. Limitation on Commissions.

§124.4. Disclosure.

§124.5. Persistency Rate and Reports.

§124.6. Investment Objective.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Securities Commissioner
State Securities Board

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Chapter 133. Forms

7 TAC §133.33

The State Securities Board proposes an amendment to §133.33, concerning two new uniform forms. The amendment would authorize acceptance of Form NF, Uniform Investment Company Notice Filing, and the Model Accredited Investor Exemption Uniform Notice of Transaction. Form NF would be used in connection with notice filings for certain federal covered securities, the Model Accredited Investor Exemption Uniform Notice Of Transaction would be used in connection with the new exemption in §139.19, which is being proposed concurrently.

David Grauer, Director, Enforcement Division, and Micheal Northcutt, Director, Securities Registration Division, have determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Grauer and Mr. Northcutt also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to facilitate notice filings by investment companies and use of the accredited investor exemption contained in §139.19. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The amendment affects Texas Civil Statutes, Article 581-7.

§133.33. Uniform Forms Accepted, Required, or Recommended.

(a) Assuming the appropriate exhibits and supplements are filed, the State Securities Board will accept for filing the following "Uniform Forms" in lieu of the requisite Texas form, if any.

(1)-(9) (No change.)

(10) NF. Uniform Investment Company Notice Filing.

(11) Model Accredited Investor Exemption Uniform Notice of Transaction.

(b)-(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chapter 139. Exemptions by Rule or Order

7 TAC §139.18

The State Securities Board proposes new §139.18, concerning broker-dealer and investment adviser advertising on the Internet. The proposed rule, patterned after a North American Securities Administrators Association model, would allow dealers, advisers, and their agents to disseminate general information over the Internet regarding their products and services, while affirmatively stating that the person or firm can conduct business in Texas only if properly registered, excluded, or exempted from state registration requirements. No responses to persons in Texas can be made absent compliance with Texas registration requirements. The proposal would require agents of dealers and investment advisers to prominently disclose their affiliation with the associated dealer or investment adviser. Additionally, dealers and investment advisers would retain responsibility for authorizing, reviewing and approving the content of Internet communications by their agents.

David Grauer, Director, Enforcement Division, and Michael S. Gunst, Director, Dealer Registration Division, have determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Grauer and Mr. Gunst also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to promote legitimate uses of the Internet by the securities industry by providing clarification of the applicability of the Texas Securities Act and Rules to broker-dealers and investment advisers advertising on the Internet. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new rule is proposed under Texas Civil Statutes, Articles 581-28-1 and 581-12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.B provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule.

The new rule affects Texas Civil Statutes, Article 581-12, 581-13, 581-18, and 581-22.

§139.18. Dealer and Investment Adviser Use of the Internet to Disseminate Information on Products and Services.

(a) Dealers, investment advisers, dealer agents, and investment adviser representatives who use the Internet, the World Wide Web, and similar proprietary or common carrier electronic systems (collectively, the "Internet") to distribute information on available products and services through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods ("Internet Communications") shall not be deemed to be a "dealer" in this state for purposes of the Act, §4.D, based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(A) the dealer, investment adviser, dealer agent, or investment adviser representative in question may only transact business in this state if first registered, excluded, or exempted from Texas dealer, investment adviser, dealer agent, or investment adviser representative registration requirements, as may be; and

(B) follow-up, individualized responses to persons in Texas by such dealer, investment adviser, dealer agent, or investment adviser representative that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with Texas dealer, investment adviser, dealer agent, or investment adviser representative registration requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in Texas, said dealer, investment adviser, dealer agent, or investment adviser representative is first registered in Texas or qualifies for an exemption or exclusion from such requirement. Nothing in this section shall be construed to relieve a Texas registered dealer, investment adviser, dealer agent, or investment adviser representative from any applicable securities registration requirement in Texas;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in Texas over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a dealer agent or investment adviser representative:

(A) the affiliation with the dealer or investment adviser of the dealer agent or investment adviser representative is prominently disclosed within the Internet Communication;

(B) the dealer or investment adviser with whom the dealer agent or investment adviser representative is associated retains responsibility for reviewing and approving the content of any Internet Communication by a dealer agent or investment adviser representative;

(C) the dealer or investment adviser with whom the dealer agent or investment adviser representative is associated first

authorizes the distribution of information on the particular products and services through the Internet Communication; and

(D) in disseminating information through the Internet Communication, the dealer agent or investment adviser representative acts within the scope of the authority granted by the dealer or investment adviser.

(b) The position expressed in this section extends to state dealer, investment adviser, dealer agent, and investment adviser representative registration requirements only, and does not excuse compliance with applicable securities registration, antifraud, or related provisions.

(c) Nothing in this section shall be construed to affect the activities of any dealer, investment adviser, dealer agent, or investment adviser representative engaged in business in this state that is not subject to the jurisdiction of the Securities Commissioner as a result of the National Securities Markets Improvement Act of 1996, as amended.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chapter 139. Exemptions by Rule or Order

7 TAC §139.19

The State Securities Board proposes new §139.19, concerning an accredited investor exemption. The proposed exemption would exempt issuers offering securities to accredited investors from securities registration requirements under the Texas Securities Act, §22 or Chapter 139 of the Board's rules. The exemption corresponds to the North American Securities Administrators Association model accredited investor exemption. The proposal would allow a general announcement of the proposed offering, pursuant to certain conditions. A notice filing with the Securities Commissioner would be required, consisting of a notice of transaction, a consent to service of process, and a copy of the general announcement. The notice filing will utilize the Model Accredited Investor Exemption Uniform Notice of Transaction, which is being added to the list of forms accepted by the agency in an amendment to §133.33, which is being proposed concurrently.

David Grauer, Director, Enforcement Division, Michael S. Gunst, Director, Dealer Registration Division, John R. Morgan, Deputy Securities Commissioner, and Micheal Northcutt, Director, Securities Registration Division, have determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Grauer, Mr. Gunst, Mr. Morgan and Mr. Northcutt also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to facilitate capital raising and the use of electronic designated matching services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new rule is proposed under Texas Civil Statutes, Article 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

The new rule affects Texas Civil Statutes, Articles 581-7, 581-8, and 581-22.

§139.19. Accredited Investor Exemption.

Any offer or sale of a security by an issuer in a transaction that meets the requirements of this section is exempted from the securities registration requirements of the Texas Securities Act and exempted from the filing requirements contained in the Texas Securities Act, §22.A, and Chapter 139 of this title (relating to Guidelines for Regulation of Offers).

(1) Who may purchase. Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. "Accredited investor" is defined in 17 Code of Federal Regulations §230.501(a) promulgated by the SEC as made effective in SEC Release Number 33-6389, as amended in Release Numbers 33-6758 and 33-6825.

(2) Unavailable for certain issuers. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(3) Investment intent; resales. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under the Texas Securities Act, §7, or to an accredited investor pursuant to an exemption available under the Texas Securities Act or Board rules.

(4) Disqualifications.

(A) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any

underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

(i) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(ii) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(iii) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(B) Subparagraph (A) of this paragraph shall not apply if:

(i) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

(ii) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(iii) the issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subsection.

(5) General announcement.

(A) A general announcement of the proposed offering may be made by any means.

(B) The general announcement shall include only the following information, unless additional information is specifically permitted by the Securities Commissioner:

(i) the name, address, and telephone number of the issuer of the securities;

(ii) the name, a brief description, and price (if known) of any security to be issued;

(iii) a brief description of the business of the issuer in 25 words or less;

(iv) the type, number, and aggregate amount of securities being offered;

(v) the name, address, and telephone number of the person to contact for additional information; and

(vi) a statement that:

(I) sales will only be made to accredited investors;

(II) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(III) the securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(6) Provision of additional information. The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (5) of this section, if such information:

(A) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(B) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(7) Telephone solicitation. No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(8) Loss of exemption. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this section.

(9) Filing. The issuer shall file with the Securities Commissioner a notice of transaction, a consent to service of process, and a copy of the general announcement within 15 days after the first sale in this state.

(10) Dealer and agent registration. In conducting sales pursuant to this section, dealer and agent registration requirements of the Texas Securities Act and Board rules must be complied with.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709993
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: September 11, 1997
For further information, please call: (512) 305–8300

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 61. School Districts

Subchapter CC. Commissioner's Rules Concerning School Facilities

19 TAC §61.1032

The Texas Education Agency (TEA) proposes new §61.1032, concerning instructional facilities allotment. The new section specifies the method for determining allotments, the application process, relevant definitions, and requirements, for school district information.

In House Bill 5, the 75th Texas Legislature repealed the school facilities assistance grant program and replaced it with the Instructional Facilities Allotment. The new program operates to equalize access to funding through a guaranteed yield approach for new debt, either as school district bonds or as lease-purchase arrangements. The legislature appropriated $100 million each year of the current biennium to fund the state's share of the debt service costs.

Felipe Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the section is in effect there will be fiscal implications as a result of enforcing or administering the section.

The effect on state government (Texas Education Agency) will be an estimated additional cost of $65 million in fiscal year 1998 and $135 million in fiscal year in 1999. The effect on local government (school districts) will be savings of $65 million in fiscal year 1998 and $135 million in fiscal year 1999. The legislature authorized a new Instructional Facilities Allotment and appropriated $100 million in each year of the 1997-1998/ 1998-1999 biennium as intial funding, with a provision that allows unspent balances to be carried forward to the next fiscal year. The program operates to reduce the costs of borrowing funds to finance school construction. The amounts shown are the estimated amounts of state grants to be spent in each year, that should reduce local tax requirements by an equivalent amount. There will be no effect on small businesses.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be up to $3 billion in construction projects that will likely be partially funded from the Instructional Facilities Allotment. This will allow school districts to fund projects at less cost to local taxpayers, or in some cases, fund projects which otherwise would not be built. Appropriate facilities for the instructional programs is likely to lead to better student performance. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701, or may be submitted electronically at the following address: http://www.tea.state.tx.us/sboe/rules/proposed. Comments must be received by 5:00 p.m., Friday, September 12, 1997, to be reflected in the final adoption preamble. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §46.002, as added by House Bill 4, 75th Texas Legislature, which authorizes the commissioner of education to adopt rules for the administration of the Instructional Facilities Allotment.

The new section implements the Texas Education Code, §46.002, as added by House Bill 4.

§61.1032. Instructional Facilities Allotment.

(a) Definitions. The following definitions apply to the instructional facilities allotment governed by this section:

(1) Instructional facility - real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by Texas Education Code (TEC), §28.002.

(2) Noninstructional facility - a facility that may occasionally be used for instruction, but the predominant use is for purposes other than teaching the curriculum required by TEC, §28.002.

(3) Necessary Fixture - equipment necessary to the use of a facility for its intended purposes, but which is permanently attached to the facility such as lighting and plumbing.

(4) Debt service - as used in this section, debt service shall include payments of principal and interest on bonded debt or the amount of a payment under an eligible lease-purchase arrangement

(b) Application process. A school district must complete an application requesting funding under the Instructional Facilities Allotment. The commissioner may require supplemental information to be submitted at an appropriate time after the application is filed to reflect changes in amounts and conditions related to the debt. The application shall contain at a minimum the following:

(1) a description of the needs and projects to be funded with the debt issue or other financing, with an estimate of cost of each project and a categorization of projects according to instructional and noninstructional facilities or other uses of funds;

(2) a description of the debt issuance or other financing proposed for funding, including a projected schedule of payments covering the life of the debt;

(3) an estimate of the weighted average maturity of bonded debt; and

(4) drafts of official statements or contracts that fully describe the debt, as soon as available.

(c) District eligibility. All school districts legally authorized to enter into eligible debt arrangements as defined in subsection (d) of this section are eligible to apply for an Instructional Facilities Allotment.

(d) Debt eligibility. In order to be eligible for state funding under this section, a debt service requirement must meet all of the criteria of this subsection.

(1) The debt service must be an obligation of the school district which is entered into pursuant to the issuance of bonded debt under TEC, Subchapter A, Chapter 45; an obligation for refunding bonds as defined in TEC, §46.007; or an obligation under a lease-purchase arrangement authorized by Local Government Code, §271.004.

(2) The taxes levied for the eligible bonded debt were first levied for the 1997 tax year or later and collected in the 1997-1998 school year or later. The first payment under a lease-purchase

arrangement must be scheduled to occur on or after September 1, 1997.

(3) Eligible bonded debt must have a weighted average maturity of at least eight years. The term of a lease-purchase agreement must be for at least eight years. For purposes of this section, a weighted average maturity shall be calculated by dividing bond years by the issue price, where "bond years" is defined as the product of the dollar amount of bonds divided by 1,000 and the number of years from the dated date to the stated maturity, and "issue price" is defined as the par value of the issue plus accrued interest, less original issue discount or plus premium.

(4) Funds raised by the district through the issuance of bonded debt must be used for an instructional facility purpose as defined by TEC, §46.001. The facility acquired by entering into a lease- purchase agreement must be an instructional facility as defined by TEC, 46.001.

(5) If the bonded debt is for a refunding or a combination of refunding and new debt, the refunding portion must meet the same eligibility criteria with respect to dates of first debt service as a new issue.

(6) Application for funding of the bonded debt service or lease-purchase payments must be made prior to the sale of the bonds or the passage of an order by the school district board of trustees authorizing a lease-purchase arrangement.

(e) Biennial limitation on access to allotment. The cumulative amount of new debt service for which a district may receive approvals for funding within a biennium shall be the greater of $100,000 per year or $250 per student in average daily attendance per year. A district may submit multiple applications for approval during the same biennium. Timely application before the sale of bonds or authorizing order for a lease- purchase must be made to ensure eligibility of the debt for program participation. The calculation of the limitation on assistance shall be based on the highest annual amount of debt service that occurs within the state fiscal biennium in which payment of state assistance begins. Increases in debt service payment requirements in subsequent biennia must receive approval through additional applications. The limitation on the allotment for subsequent biennia shall be the total dollar amount of debt service approved for the allotment, based on the calculation of the limitation on assistance at the time of approval.

(f) Finality of award. Awards of assistance under TEC, Chapter 46, will be made based on the information available at the close of the application cycle. Changes in the terms of the issuance of debt, either in the length of the payment schedule or the applicable interest rate, that occur after the time of the award of assistance will not result in an increase in the debt service considered for award. Any reduction in debt service requirements resulting from changes in the terms of issuance of debt shall result in a reduction in the amount of the award of assistance.

(g) Data sources.

(1) For purposes of determining the limitation on assistance and prioritization, the projected average daily attendance as submitted to the legislature by the Texas Education Agency (TEA) in March of an odd-numbered year, as required by TEC, §42.254, shall be used.

(2) For purposes of prioritization, the final property values certified by the Comptroller of Public Accounts for the tax year preceding the year in which assistance is to begin shall be used. If final property values are unavailable, the most recent projection of property values shall be used.

(3) For purposes of both the calculation of the limitation on assistance and prioritization, the commissioner may consider, prior to the close of an application cycle, adjustments to data values determined to be erroneous.

(4) All final calculations of assistance earned shall be based on property values as certified by the Comptroller for the preceding school year, and the final average daily attendance for the current school year.

(h) Allocation of debt service between qualified and nonqualified projects. Debt service shall be allocated among qualified and nonqualified purposes and among eligible and ineligible categories of debt. The method used for allocation among qualified and nonqualified purposes shall be on the basis of pro rata value of the instructional facility versus the noninstructional purposes over the life of the debt service, unless a different basis is indicated in the bond order. The method of allocation of debt service between eligible and ineligible categories must be the same method selected for approval by the Attorney General.

(i) Payments and deposits.

(1) Payment of state assistance shall be made as soon as practicable after September 1 of each year. No payments shall be made until the sale of bonds is determined to be final or the contract for lease-purchase financing has been assigned.

(2) Funds received from the state for bonded debt must be deposited to the interest and sinking fund of the school district and must be considered in setting the tax rate necessary to service the debt.

(3) Funds received from the state for lease-purchase agreements must be deposited to the general fund of the district and used for lease-purchase payments.

(4) A final determination of state assistance for a school year will be made using final attendance data and property value information as may be affected by TEC, §42.257. Additional amounts owed to districts shall be paid along with assistance in the subsequent school year, and any reductions in payments shall be subtracted from payments in the subsequent school year.

(5) As an alternative method of adjustment of payments, the commissioner may increase or decrease allocations of state aid

(2) An application received after the deadline shall be considered a valid application for the subsequent period unless withdrawn by the submitting district before the end of the subsequent period.

(3) An application may be submitted no earlier than 90 calendar days prior to the prospective sale date/pricing date of the bond issue or the date the school board adopts the order authorizing a lease-purchase agreement. If the sale or pricing of bonds or adoption of an order authorizing a lease-purchase agreement does not take place within 90 days of the prospective date identified in the application, the TEA shall consider the application withdrawn.

(4) The voters of the school district may not submit an application for bonded debt prior to the successful passage of an authorizing proposition. An application for a lease-purchase agreement may not be submitted prior to the end of the 60-day waiting period in which voters may petition for a referendum, or until the results of the referendum, if called, approve the agreement.

(l) Prioritization and notice of award. Upon close of the application cycle, all eligible applications shall be ranked in order of property wealth per student in average daily attendance. State assistance will be awarded beginning with the district with the lowest property wealth and continue until all available funds have been utilized. If a district has not previously received any assistance due to a lack of appropriated funds, its property wealth for prioritization shall be reduced by 10% for each biennium in which assistance was not provided. Each district shall be notified of the amount of assistance awarded and its position in the rank order for the application cycle.

(m) Bond taxes. A school district that receives state assistance must levy and collect sufficient interest and sinking fund taxes to meet its local share of the debt service requirement for which state assistance is granted. Failure to levy and collect sufficient taxes shall result in pro rata reduction of state assistance.

(n) Exclusion from taxes. The taxes collected for bonded debt service for which funding under TEC, Chapter 46, is granted shall be excluded from the tax collections used to determine the amount of state aid under TEC, Chapter 42.

(o) Calculation of bond tax rate (BTR) for lease-purchase arrangements. The value of BTR in the formula for state assistance for a lease-purchase arrangement shall be calculated based on the lease-purchase payment requirement, not to exceed the relevant limitations described in this section. The lease-purchase payment shall be divided by the guaranteed level (FYL), then by average daily attendance (ADA), then by 100. The value of BTR shall be subtracted from the value of district tax rate (DTR) as computed in TEC, §42.302, prior to limitation imposed by TEC, §42.303.

(p) Continued treatment of taxes and lease-purchase payments. Once approved for funding under TEC, Chapter 46, a district may not select whether taxes associated with the bonded debt are considered for purposes stated in TEC, Chapter 46, or Chapter 42. Until approved for assistance under TEC, Chapter 46, taxes collected for debt service may be considered in the calculation of state aid in TEC, Chapter 42. Bonded debt service or lease-purchase payments that were excluded from consideration for state assistance due to prioritization or due to the limitation on assistance may be considered for state assistance in subsequent biennia through additional applications. A modified application may be provided for previously rejected debt service or lease-purchase payments.

(q) Variable rate bonds. Variable rate bonds are eligible for state assistance under the Instructional Facilities Allotment. For purposes of calculating the biennial limitation on access to the allotment, the payment requirement for a variable rate bond shall be valued at the interest rate specified in the official statement (or draft) as the rate to be used in calculating the minimum amount a district must budget for payment of interest cost and the scheduled minimum mandatory redemption amount, if applicable. For purposes of calculating state assistance, the lesser of the actual interest rate or that used for the calculation of the limitation on access to the allotment shall be used. A district may exercise its ability to make payments in amounts in excess of the minimum, but the excess amount shall not be used in determining the value of BTR or in the calculation of state assistance in that year.

(r) Reports required. The commissioner may require such information and reports as are necessary to assure compliance with applicable laws. The commissioner may require immediate notification by the district of relevant financing activities such as refunding or refinancing of bond issues, renegotiation of lease-purchase terms, change in use of bond proceeds, or other actions taken by the district that might affect state funding requirements.

(s) Temporary provision. This subsection provides for an initial application cycle with a deadline for applications of September 1, 1997. This subsection expires on January 1, 1998. The requirement to apply for assistance prior to issuance of debt is waived for the initial application cycle. To be eligible for the initial application, the debt service must meet the following criteria, notwithstanding other provisions of this section to the contrary:

(1) The election authorizing bonded debt must be held on or before September 30, 1997. For lease- purchase agreements, the end of the 60-day waiting period in which voters may petition for a referendum, or the referendum, if called, must occur on or before September 30, 1997.

(2) The sale or pricing of bonds or adoption of an order authorizing a lease-purchase agreement must take place on or before December 31, 1997.

(3) All requirements of subsection (d)(1)-(5) of this section must be met. A payment made prior to the 1997-1998 school year for debt service on eligible bonded debt sold in the 1996-1997 school year does not invalidate the eligibility of the debt service for state assistance so long as the payment was not made from taxes levied for that debt, the sale of the bonds occurred after the adoption of the district tax rates for tax year 1996, and the district had no opportunity to levy taxes for the initial payment in 1996-1997.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710068
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: September 11,1997
For further information, please call: (512) 463–9701

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 101. Dental Licensure

22 TAC §101.8

The State Board of Dental Examiners proposes new §101.8, concerning persons with criminal backgrounds.

Douglas A. Beran, Executive Director, State Board of Dental Examiners (SBDE), has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §101.8 establishes the guidelines the SBDE will follow when considering whether a criminal history will affect either an applicant's initial request for licensure or an individual's status as a licensed practitioner.

There will be no effect on small and large businesses. Persons who are required to comply with the proposed new rule would be impacted negatively if their licenses were revoked or suspended or if licensure were denied because they would not be able to practice their dental profession.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997.

The new rule is proposed under Texas Government Code §2001.021 et seq; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; Article 4545 which provides that the State Board of Dental Examiners may adopt rules relating to licensure requirements for dentists; and Texas Civil Statutes, Article 6252-13(c), which addresses licensure of professionals with criminal histories.

The new rule does not affect other statutes, articles, or codes.

§101.8. Persons with Criminal Backgrounds.

(a) The State Board of Dental Examiners (SBDE) may revoke or suspend an existing license, or deny an application for licensure because of a person's conviction of a felony under any state or federal law, if the crime directly relates to the duties and responsibilities of the profession for which the person seeks licensure.

(b) No person currently serving in prison for conviction of a felony under any state or federal law is eligible to obtain a license to practice dentistry or dental hygiene. Such conviction of a person holding a license to practice dentistry or dental hygiene shall be cause for initiation of disciplinary procedures against such person.

(c) In determining whether a criminal conviction directly relates to the practice of dentistry or dental hygiene, the board shall consider the factors listed in Texas Revised Civil Statute Annotated, Article 6252-13c(4)(b) (Vernon Supplement, 1997).

(d) Those crimes which the board considers to be of such serious nature that they relate to fitness to practice a profession, or as directly related to the practice of dentistry or dental hygiene include, but are not limited to:

(1) any felony of which fraud, dishonesty, or deceit is an essential element;

(2) any criminal violation of the Dental Practice Act or other statutes regulating or pertaining to the professions of dentistry or dental hygiene;

(3) any criminal violation of statutes regulating other professions in the healing arts;

(4) murder;

(5) burglary;

(6) robbery;

(7) rape;

(8) theft;

(9) child molestation;

(10) habitual use or addiction to controlled substance abuse or substance diversion; and

(11) felony driving while intoxicated.

(e) The board may consider a person's present fitness for licensure in determining whether a person's conviction of a crime is cause for denial of an application or for disciplinary procedures. In determining a person's present fitness for licensure, the board shall consider the factors listed in Texas Civil Statute Annotated, Article 6252-13c(4)(c) (Vernon Supplement, 1997).

(f) It shall be the responsibility of the applicant to secure and provide to the board the recommendations regarding all offenses from the prosecution, law enforcement, and correctional authorities who prosecuted, arrested or had custodial responsibility for the applicant. Failure to provide such recommendation, is justification to refuse licensing or imposition of sanction unless the applicant shows good cause for such failure.

(g) The applicant shall also furnish proof in such form as may be required by the board that he or she has maintained a record of steady employment, has supported his or her dependents, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709938

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: September 11, 1997

For further information, please call: (512) 463–6400

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Chapter 102. Fees

22 TAC §102.1

The State Board of Dental Examiners proposes amendment to §102.1, concerning licensing and examination fees.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on local government as a result of enforcing or administering the rule. For state government, the projected increase in state revenue for fiscal year 1998 will be $155,000; for fiscal year 1999, the projected increase in state revenue will be $162,120. These amounts will be used to finance agency operations. For the State Board of Dental Examiners' dental peer assistance program, the estimated revenue for the program's operations will be $129,965 for fiscal year 1998 and $135,463 for fiscal year 1999.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing §102.1 will be that the State Board of Dental Examiners will have additional staff and resources to enforce the Dental Practice Act and the peer assistance program will have a guaranteed revenue to assure care for professionals impaired by chemical dependency or mental illness.

There will be no effect on small and large businesses. The effect on persons who are required to comply with the rule as proposed is an increase in fees as follows: dentists renewal fee: from $60 per year to $70 per year; dental hygiene renewal fee: from $36 per year to $41 per year; peer assistance annual fee for dentists: from $5.00 to $9.00.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4551(b) which provides that the State Board of Dental Examiners shall establish reasonable and necessary fees to cover the cost of administering the Dental Practice Act, and HB 1, General Appropriations Act, 75th Legislature, Regular Session, Article VIII.

The proposed amended rule does not affect other statutes, articles, or codes.

§102.1. Licensing and Examination Fees.

(a) (No change.)

(b) Any person licensed to practice dentistry, dental hygiene and operate a dental laboratory in the State of Texas shall pay the following annual renewal fees:

(1) dentists: **$70** [$60]

(2) dental hygienists: **$41** [$36]

(3) dental laboratory: $100

(c) The peer assistance fee for dentists shall be **$9.00**[$5.00]

(d)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709939
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: September 11, 1997
For further information, please call: (512) 463–6400

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Chapter 107. Dental Board Procedures

22 TAC §107.400

The State Board of Dental Examiners proposes new rule §107.400, concerning reportable disciplinary actions.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §107.400 provides a method to eliminate reporting that a licensee has been disciplined if requested by the licensee and if the reason for such discipline did not involve patient harm or fraud and a specified period of time has passed without other disciplinary action.

There will be no effect on small and large businesses. Licensees whose disciplinary actions meet the criteria set forth in the proposed new rule may have their disciplinary actions removed from the category of reportable actions if requested; however, other licensees whose disciplinary actions do not meet the criteria in the proposed new rule will continue to have the disciplinary action noted in the State Board of Dental Examiners' license database.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997.

The new rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

The proposed new rule does not affect other statutes, articles, or codes.

§107.400. Reportable Disciplinary Actions.

(a) Information concerning licensure for all persons of the State Board of Dental Examiners (SBDE) is entered in a license database. The entry in the license database for a licensee who has been disciplined will be annotated that a disciplinary action has

occurred. In responding to licensure status requests, the SBDE will report whether a licensee has been disciplined by the Board.

(b) The Board upon written request from a licensee will remove such annotations if the discipline imposed falls into any category listed below. Licensees having more than one disciplinary action do not qualify for removal of the annotations.

(1) Disciplinary action in which a "reprimand" order was issued.

(A) The effective date of the Board Order is at least three years past;

(B) the "reprimand" order did not involve patient harm, a criminal act, or fraud;

(C) the licensee has had no subsequent disciplinary action;

(D) the licensee has no disciplinary proceeding pending; and

(E) the licensee is currently not under investigation by the SBDE.

(2) Disciplinary action in which a "suspension, all probated" order was issued.

(A) The effective date of the board order is at least seven years past;

(B) the "suspension, all probated" order did not involve patient harm, a criminal act, or fraud;

(C) the licensee has had no subsequent disciplinary action;

(D) the licensee has no disciplinary proceeding pending; and

(E) the licensee is currently not under investigation by the SBDE.

(c) The Enforcement Committee of the SBDE will review each request and may request additional information or other documents to enable the committee to appropriately evaluate a request.

(d) Upon a determination by the Enforcement Committee that the reported action falls into one of the categories and that the licensee meets all requirements of this rule the committee will make a recommendation to the Board. Upon Board approval, the annotation of disciplinary action for a licensee will be removed from the database.

(e) The Board will notify the licensee in writing of the results of the review within a reasonable period of time.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709940
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: September 11, 1997
For further information, please call: (512) 463–6400

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Chapter 109. Conduct

22 TAC §109.109

The State Board of Dental Examiners proposes new §109.109, concerning advertising non ADA specialties.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §109.109 establishes a method to allow dentists who have achieved certain professional status to exercise their first amendment rights of free speech to inform the public of their status in a manner that is not false and misleading and that the public will be fully informed regarding the professional training and expertise of the dentist areas of practice for which they wish to advise the public of diplomate, or fellowship status.

There will be no effect on small and large businesses. The effect on persons who are required to comply with the rule as proposed shall be they are required to identify those specialties that are not recognized by the American Dental Association.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997.

The new rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

The proposed new rule does not affect other statutes, articles, or codes.

§ 109.109. Advertising non ADA Specialties.

A dentist may announce in any means of communication with patients or the general public; attainment of a fellowship or certification as a diplomate only if the dentist has successfully completed the qualifying examination of the appropriate certifying board of one or more of the specialties recognized by the "American Dental Association", except that a licensed dentist who has been granted diplomate or fellow status by a bona fide national organization which is not recognized as a certifying board by the American Dental Association, but grants diplomate or fellow status based upon the dentist's postgraduate education, training, experience and an oral and written examination based upon psychometric principles, may use the terms "diplomate", "fellow", or "associate" compared to the announcement of the status "the (insert the name of organization granting diplomate status) is not recognized as a specialty board by the American Dental Association."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
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Anesthesia and Anesthetic Agents

22 TAC §109.172

The State Board of Dental Examiners proposes amendments to §109.172, concerning definitions.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §109.172 clarifies certain definitions relative to administration of anesthesia.

There will be no effect on small and large businesses and on persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997. In addition, a public hearing will be held on Monday, September 15, 1997, at 10:00 a.m., in Hearing Room 102 of the Texas Department of Insurance located at 333 Guadalupe, Austin, Texas.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

The proposed amended rule does not affect other statutes, articles, or codes.

§109.172. Definitions.

The following words and terms, when used in **rule 109.172 through rule 109.177** [this chapter], shall have the following meanings, unless the context clearly indicates otherwise.

Analgesia-the diminution **or elimination of pain**[or production of increased tolerance to pain in the conscious patient].

Anxiolysis -the diminution or elimination of anxiety.

Competent -displaying special skill or knowledge derived from training and experience.

[Parenteral] Conscious Sedation-a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, **and that is** produced by a pharmacologic or non-pharmacologic method, or a combination thereof. **In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.**

Continual -repeated regularly and frequently in a steady succession.

Continuous -prolonged without any interruption at any time.

[Parenteral] Deep Sedation-**an induced** [A Controlled] state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to **continually maintain an airway independently and/or** respond purposefully to verbal command, **and is** produced by a pharmacological or non-pharmacological method, or a combination thereof.

Enteral -any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual).

Facility -the primary office where a permit holder practices dentistry and provides anesthesia services.

Facility inspection -an on-site inspection to determine if a facility is supplied, equipped, staffed, and maintained in a condition to support provision of anesthesia services that meet the standard of care; may be required by the State Board of Dental Examiners prior to the issuance of an anesthetic permit or any time during the term of the permit if the holder of or applicant for a permit owns or operates a primary facility or satellite facility.

General anesthesia-**an induced**[A controlled] state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully **to physical stimulation or** [to] verbal command, **and is** produced by a pharmacological or non-pharmacological method or a combination thereof.

Immediately available -on-site in the facility and available for immediate use.

Inhalation -a technique of administration in which a gaseous or volatile agent is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed (e.g. nitrous oxide/oxygen sedation).

Local anesthesia-the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

May[or could]-indicates freedom or liberty to follow a **reasonable** [suggested] alternative.

Parenteral -a technique of administration in which the drug bypasses the gastrointestinal (GI) tract, i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC), intraocular (IO).

Patient Physical Status Classification-

(A) ASA: American Society of Anesthesiologists

(B) ASA I: a normal health patient

(C) ASA II: a patient with mild systemic disease

(D) ASA III: a patient with severe systemic disease

(E) ASA IV: a patient with severe systemic disease that is a constant threat to life

(F) ASA V: a moribund patient who is not expected to survive without the operation

(G) ASA VI: a declared brain-dead patient whose organs are being removed for donor purposes.

(H) E: emergency operation of any variety (used to modify the ASA I - ASA VI).

Portability -the ability of a permit holder to provide permitted anesthesia services in a location other than a facility or satellite facility.

Satellite facility an additional office or offices owned or operated by the permit holder, or owned or operated by a professional organization through which the permit holder practices dentistry, or a licensed hospital facility.

Should-indicates the recommended manner to obtain the standard; highly desirable

Time-oriented anesthesia record-documentation at appropriate intervals of drugs, doses and physiologic data obtained during patient monitoring.

Transdermal/transmucosal-a technique of administration in which the drug is administered by patch or iontophoresis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709942
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463–6400

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22 TAC §109.173

The State Board of Dental Examiners proposes amendments to §109.173, concerning minimum standard of care.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §109.173 communicates unambiguously that practicing dentists must follow generally accepted protocols and/or standards of care for management of complications and emergencies and informed consents will be required only where there is a reasonable probability of complications from a procedure.

There will be no effect on small and large businesses and on persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997. In addition, a public hearing will be held on Monday, September 15, 1997, at 10:00 a.m., in Hearing Room 102 of the Texas Department of Insurance located at 333 Guadalupe, Austin, Texas.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

The proposed amended rule does not affect other statutes, articles, or codes.

§109.173. Minimum Standard of Care.

Each dentist licensed by the [Texas] State Board of Dental Examiners and practicing in Texas shall conduct **his/her**[their] practice in a manner consistent with that of a reasonable and prudent dentist under the same or similar circumstances. Further, each dentist:

(1)-(3) (No change.)

(4) Shall, for office emergencies:

(A)-(B) (No change.)

(C) provide training to dental office personnel in emergency procedures which shall include, but not necessarily be limited to, basic cardiac life support, inspection and utilization of emergency equipment in the dental office, and office procedures to be followed in the event of an emergency as determined by a reasonable and prudent dentist in the same or similar circumstances; **and**

(D) shall adhere to generally accepted protocols and/or standards of care for management of complications and emergencies.

(5) (No change.)

(6) **Should maintain a written informed consent for all procedures where a reasonable probability of complications from the procedure exists.**[Shall obtain an informed consent in all situations where required by law.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
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22 TAC §109.174

The State Board of Dental Examiners proposes amendments to §109.174, concerning sedation, anesthesia permits.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the

rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §109.174 will assure that the overall quality of anesthesia procedures meets the standard of care.

There will be no effect on small and large businesses. The effect on persons who are required to comply with the rule as proposed shall be they remain qualified to meet the standard of care for anesthesia procedures or they shall not be authorized by the State Board of Dental Examiners to perform anesthesia procedures. The fiscal impact on individuals required to comply with the rule as proposed will be contingent upon each individual's cost of permits and training for the anesthesia procedure authorized by the State Board of Dental Examiners and concomitant costs associated with each permitted procedure, e.g., equipment and staff.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997. In addition, a public hearing will be held on Monday, September 15, 1997, at 10:00 a.m., in Hearing Room 102 of the Texas Department of Insurance located at 333 Guadalupe, Austin, Texas.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

The proposed amended rule does not affect other statutes, articles, or codes.

§109.174. Sedation/Anesthesia Permit.

(a) The [Texas] State Board of Dental Examiners shall appoint advisory consultants for advice and recommendations to the Board on permit requirements, applicant and facility approval.

(b) From the effective date of these sections, each dentist licensed by the [Texas] State Board of Dental Examiners and practicing in Texas, who desires to utilize nitrous oxide/oxygen inhalation conscious sedation, parenteral conscious sedation, and/or parenteral deep sedation and general anesthesia, must obtain a permit [of authorization] from the [Texas] State Board of Dental Examiners for the requested procedure.

(c) Any dentist approved by the [Texas] State Board of Dental Examiners under previous rules priorto the effective date of this section for the utilization of nitrous oxide/oxygen inhalutili]TJfl 0 -1.097 TDfl [(conscious)-580(sedation,)-619(parenteral)-579(conscious)-553u

(ii) **must have completed an ADA accredited post-doctoral training program which affords comprehensive and appropriate training necessary to administer and manage inhalation conscious sedation.**

(B) The following shall apply to the administration of inhalation conscious sedation in the dental office:

(i) **provision of inhalation conscious sedation by another duly qualified dentist or physician anesthesiologist requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS);**

(ii) **when a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, provision of inhalation conscious sedation by a CRNA shall require the operating dentist to have completed training in inhalation conscious sedation, and to be permitted for its utilization.**

(2) Parenteral Conscious Sedation

(A) To administer parenteral conscious sedation, the dentist must satisfy one of the following criteria:

(i) **completion of a comprehensive training program in parenteral conscious sedation that satisfies the requirement described in Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced; or**

(ii) **completion of an ADA accredited post-doctoral training program (e.g. general practice residency) which affords comprehensive and appropriate training necessary to administer and manage parenteral conscious sedation.**

(B) The following shall apply to the administration of parenteral conscious sedation in the dental office:

(i) **provision of parenteral conscious sedation by another duly qualified dentist or physician anesthesiologist requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS);**

(ii) **when a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, provision of parenteral conscious sedation by a CRNA shall require the operating dentist to have completed training in parenteral conscious sedation, and to be permitted for its utilization;**

(iii) **a dentist administering parenteral conscious sedation must document current, successful completion of an Advanced Cardiac Life Support (ACLS) course or other advanced emergency procedures course appproved by the State Board of Dental Examiners.**

(3) Parenteral Deep Sedation/General Anesthesia

(A) To administer parenteral deep sedation/general anesthesia, the dentist must satisfy one of the following criteria:

(i) **completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in Part II of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced; or,**

(ii) **completion of an ADA accredited post-doctoral training program (e.g., oral and maxillofacial surgery) which affords comprehensive and appropriate training necessary to administer and manage parenteral deep sedation/general anesthesia.**

(B) The following shall apply to the administration of parenteral deep sedation/general anesthesia in the dental office:

(i) **provision of parenteral deep sedation/general anesthesia by another duly qualified dentist or physician anesthesiologist requires the operating dentist and his/her clinical staff to maintain current expertise in Basic Life Support (BLS);**

(ii) **when a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, provision of parenteral deep sedation/general anesthesia by a CRNA shall require the operating dentist to have completed training in parenteral deep sedation/general anesthesia, and to be permitted for its utilization;**

(iii) **a dentist administering parenteral deep sedation/general anesthesia must document current, successful completion of an Advanced Cardiac Life Support (ACLS) course or other advanced emergency procedures course approved by the State Board of Dental Examiners.**

[(h) Annual dental license renewal certificates shall include the annual permit renewal, except as provided for in (g) above, and shall be assessed an annual renewal fee of $5.00 payable with the license renewal beginning March 1 and thereafter. New permit issuances will be charged a $25.00 fee, payable with the application for permit, beginning March 1, 1992.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 31, 1997.

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Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463–6400

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22 TAC §109.175

The State Board of Dental Examiners proposes amendments to §109.175, concerning permit requirements and clinical provisions.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §109.175 will assure that the overall quality of anesthesia procedures meets the standard of care.

There will be no effect on small and large businesses. The effect on persons who are required to comply with the rule as proposed will be contingent upon the cost to the individual for each particular anesthesia procedure e.g., permit, training, equipment, staff.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997. In addition, a public hearing will be held on Monday, September 15, 1997, at 10:00 a.m., in Hearing Room 102 of the Texas Department of Insurance located at 333 Guadalupe, Austin, Texas.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

The proposed amended rule does not affect other statutes, articles, or codes.

*§109.175. Permit Requirements**and Clinical Provisions**.*

(a) Nitrous Oxide/oxygen inhalation conscious sedation. To induce and maintain this type of conscious sedation on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) Professional requirements. **Each dentist wishing to utilize this technique must be permitted by the State Board of Dental Examiners (SBDE) to deliver nitrous oxide/oxygen conscious sedation after having met the Education Requirements as detailed in §109.174(g)(1) of this title (relating to Sedation/ Anesthesia Permit).**

[(A) Each dentist wishing to utilize this technique must produce satisfactory evidence of completion of a didactic and clinical course of instruction in this technique. Such courses of instruction shall:]

[(i) be directed by qualified instructors with advanced education in comprehensive pain control and with broad clinical experience in this technique;]

[(ii) include a minimum of four hours of didactic work in pharmacodynamics of nitrous oxide/oxygen inhalation conscious sedation;]

[(iii) include a minimum of six hours of clinical experience under personal supervision.]

[(B) Each dentist must produce satisfactory evidence of completion of a continuing education course in the nitrous oxide oxygen inhalation/ conscious sedation which includes the prevention and management of emergencies in the dental office; or,]

[(C) Each dentist must have successfully completed qualifications governing the use of parenteral conscious sedation as noted in subsection (b) of this section or deep sedation/general anesthesia as noted in subsection (c) of this section.]

(2) Standard of care requirements. **Each dentist must maintain the minimum standard of care as detailed in §109.173 of this title (relating to Minimum Standard of Care).**

[(A) Each dentist must maintain the minimum standard of care as noted in §109.173 of this title (relating to Minimum Standard of Care).]

[(B) Each dentist shall induce, monitor, and provide continuous personal supervision of the inhalation conscious sedation procedure, or the dentist shall induce and may delegate under direct supervision, as defined in §109.172, the monitoring of the nitrous oxide inhalation conscious sedation procedure to a dental auxiliary who has been certified by the Board. Certification is obtained by successful completion of a written examination offered by the Board on said subject.]

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of nitrous oxide/ oxygen inhalation conscious sedation:

(A) Patient Evaluation. Patients subjected to inhalation conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II), this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physician or consulting medical specialist regarding potential procedure risk is desirable.

(B) Pre-Procedure preparation, informed consent:

***(i)* the patient and/or guardian must be advised regarding the procedure associated with the delivery of the inhalation agent and the appropriate informed consent should be obtained;**

***(ii)* the inhalation equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;**

***(iii)* determination of adequate oxygen supply must be completed prior to use with each patient;**

***(iv)* baseline vital signs may be obtained at the discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.**

(C) Personnel and Equipment Requirements:

***(i)* during administration of inhalation conscious sedation, at least one additional person should be present, in addition to the dentist;**

***(ii)* the dentist must have a fail-safe system that is appropriately checked and calibrated;**

***(iii)* if nitrous oxide and oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be used;**

***(iv)* the equipment must have an appropriate scavenging system.**

(D) Monitoring and Documentation:

***(i)* direct clinical observation of patient during administration must occur;**

***(ii)* individuals present during administration should be documented;**

(iii) **maximum concentration administered must be documented.**

(E) Recovery and Discharge:

(i) **recovery from inhalation conscious sedation, when used alone, should be relatively quick, requiring only that the patient remain in an operatory chair as needed;**

(ii) **patients who have unusual reactions to inhalation conscious sedation should be assisted and monitored either in an operatory chair or recovery room until stable for discharge;**

(iii) **the dentist must determine that the patient is appropriately responsive prior to discharge.**

(F) Special situations include multiple/combination techniques and types of special patients. Whenever inhalation conscious sedation is utilized in combination with any other sedative agent, including over the counter (OTC) medications, consideration should be given to using guidelines as detailed in subsection (b) and (c) of this section.

(G) Emergency Management. The dentist, personnel and facility must be prepared to treat emergencies that may arise from the administration of inhalation conscious sedation.

(b) Parenteral conscious sedation intravenous (IV), intramuscular (IM), subcutaneous (SC), submucosal (SM) **, intranasal (IN), intraocular (IO).** To induce and maintain this type of conscious sedation on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) **Professional Requirements:** [parenteral conscious sedation shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist licensed in Texas (see paragraph (3) (G) of this subsection).]

(A) each dentist wishing to utilize this technique must be permitted by the State Board of Dental Examiners (SBDE) to deliver parenteral conscious sedation after having met the educational requirements as detailed in Rule 109.174(g)(2) of this title (relating to Sedation/Anesthesia Permit).

(B) parenteral conscious sedation shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas.

(2) **Standard of Care Requirements. Each dentist must maintain the minimum standard of care as detailed in rule 109.173 of this title (relating to the Minimum Standard of Care) and shall in addition:**[Professional requirements are as follows:]

(A) **adhere to the clinical requirements as detailed in subsection (b)(3) of this section;** [has satisfactorily completed an intensive course that meets the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry" published by the American Dental Association Council on Dental Education for the parenteral conscious sedation technique requested; or]

(B) **maintain an informed parenteral conscious sedation consent for each dental patient on whom each procedure is performed, which consent shall specify that the risks related to the procedure include cardiac arrest, brain injury and death;** [has satisfactorily completed an approved graduate program by the Commission on Dental Accreditation of the American Dental Association where training to competency in parenteral conscious sedation is a minimum standard required in the training guidelines (oral and maxillofacial surgery, pediatric dentistry, periodontics, and some general practice residencies); or]

(C) **maintain an adequate time oriented, written anesthetic record which shall record dosages of anesthetic agents utilized and which shall include physiologic vital sign monitoring during the course of the procedure;**[has satisfactorily completed qualifications governing the use of general anesthesia.]

(D) maintain continuous personal supervision of the sedation procedure and patient vital sign monitoring during the course of the procedure;

(E) maintain direct supervision of auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of parenteral conscious sedation;

(F) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or The American Red Cross; and

(G) not allow a parenteral conscious sedation procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit for the procedure being performed issued by the State Board of Dental Examiners.

(3) **Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of parenteral conscious sedation:** [Standard of care requirements. Each dentist shall utilize the following standard of care in addition to the minimum standards noted in section 109.173 of this title (relating to Minimum Standard of Care) for each parenteral conscious sedation procedure:]

(A) **Patient Evaluation. Patients subjected to parenteral conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals (ASA I, II) this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV) consultation with their primary care physician or consulting medical specialist regarding potential procedure risk or special monitoring requirements is desirable.** [maintain an informed conscious sedation consent by each dental patient on whom each procedure is performed, which consent shall specify that the risks related to the procedure include brain damage and death;]

(B) **Pre-procedure preparation, informed consent:**[maintain an adequate written sedation record which shall include physiologic vital sign monitoring during the course of the procedure;]

(i) **the patient and/or guardian must be advised regarding the procedure associated with the delivery of any**

sedative agents and the appropriate informed consent should be obtained;

(ii) **if inhalation equipment is used in conjunction with parenteral conscious sedation, the equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;**

(iii) **determination of adequate oxygen supply must be completed prior to use with each patient;**

(iv) **baseline vital signs should be obtained unless the patient's behavior prohibits such determination;**

(v) **pre-treatment physical evaluation must be performed as deemed appropriate;**

(vi) **specific dietary restrictions must be delineated based on the technique used and patient's physical status;**

(vii) **appropriate verbal or written instructions must be given to the patient and/or guardian;**

(viii) **an intravenous line which is secured throughout the procedure must be established.**

(C) **Personnel Requirements and Equipment:** [maintain continuous direct supervision of the sedation procedure and patient vital sign monitoring during the course of the procedure;]

(i) **the dentist must document current successful completion of an Advanced Cardiac Life Support (ACLS) course or other advanced emergency procedures course approved by the State Board of Dental Examiners;**

(ii) **must have a fail-safe system that is appropriately checked and calibrated;**

(iii) **if nitrous oxide and oxygen delivery equipment capable of delivering less than 25% oxygen is used, an in-line oxygen analyzer must be used;**

(iv) **the equipment must have an appropriate scavenging system;**

(v) **regardless of procedure, a positive pressure oxygen system suitable for patients being treated must be available.**

(D) **Monitoring and Documentation. Maintain personal supervision of the patient during the induction of parenteral conscious sedation and for a period of time necessary to establish pharmacologic and physiologic vital sign stability. When a Certified Registered Nurse Anesthetist (CRNA) provides the parenteral conscious sedation care, he/she shall be under the direct supervision of the dentist. Delegation of personal supervision may occur if a second dentist or physician anesthesiologist is delivering the anesthesia care.**[maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross;]

(i) **Oxygenation. Color of mucosa, skin or blood should be continually evaluated. Oxygen saturation must be evaluated continuously by pulse oximetry.**

(ii) **Ventilation. Must perform observation of chest excursions and/or auscultation of breath sounds.**

(iii) **Circulation. Continuous EKG monitoring of all patients throughout the procedure with electrocardioscopy must occur. Must take and record blood pressure and pulse continually at least every five minutes.**

(iv) **Documentation. Appropriate time-oriented anesthetic record must be maintained. Individuals present during the administration of parenteral conscious sedation should be documented.**

(E) **Recovery and Discharge.** [in utilizing parenteral conscious sedation via an intravenous (IV) route of administration, the dentist shall:]

(i) **oxygen and suction equipment must be immediately available in the recovery area and/or operatory;**[maintain personal supervision of the patient during the induction of conscious sedation and for a period of time necessary to establish pharmacologic and physiologic vital sign stability. When a certified registered nurse anesthetist (CRNA) provides the conscious sedation care, he/she shall be under the direct supervision of the dentist. Delegation of personal supervision may occur if a second dentist or anesthesiologist is delivering the anesthesia care.]

(ii) **continual monitoring of oxygenation, ventilation and circulation when the anesthetic is no longer being administered; patient must have continuous supervision until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the facility;**[utilize visual and mechanical methods for vital sign monitoring which shall include, but shall not necessarily be limited to, pulse rate, patient color texture, blood pressure, respiration, blood and tissue oxygenation. Mechanical monitoring shall include a minimum of pulse oximetry;]

(iii) **must determine and document that oxygenation, ventilation, circulation, activity, skin color and level of consciousness are appropriate and stable prior to discharge;**

(iv) **must provide explanation and documentation of postoperative instructions to patient and/or a responsible adult at time of discharge;**

(v) **the dentist must determine that the patient has met discharge criteria prior to leaving the office.**

(F) **Special situations include multiple/combination techniques and types of special patients. In selected circumstances, parenteral conscious sedation may be utilized without establishing an indwelling intravenous line. These circumstances include sedation for very brief procedures; young children managed entirely by non-intravenous techniques; or the establishment of intravenous access after sedation has been induced due to poor patient cooperation.** [maintain direct supervision of auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of parenteral conscious sedation; and]

(G) **Emergency Management. The anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility and treatment of emergencies associated with the administration of parenteral conscious sedation, including immediate access to pharmacologic antagonists and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen. Advanced**

airway equipment, resuscitation medications and a defibrillator must also be available.[not allow a parenteral conscious sedation procedure to be performed in his/her office by a certified registered nurse anesthetist (CRNA) unless the dentist holds a permit for the procedure being performed issued by the Texas State Board of Dental Examiners.]

(c) Parenteral deep sedation and/or general anesthesia. To induce and maintain**parenteral** deep sedation/general anesthesia on patients having dental/oral and maxillofacial surgical procedures in the State of Texas, the following requirements must be met:

(1) **Professional Requirements:** [deep sedation/general anesthesia shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a certified registered nurse anesthetist licensed in Texas. (see paragraph (3) (G) of this subsection).]

(A) Each dentist wishing to utilize either of these techniques must be permitted by the State Board of Dental Examiners (SBDE) to deliver parenteral deep sedation and/or general anesthesia after having met the Education Requirements as detailed in rule 109.174 (g)(3) of this title (relating to Sedation/ Anesthesia Permit).

(B) Parenteral deep sedation/general anesthesia shall be induced and maintained by a dentist licensed by the State of Texas and practicing in Texas, a physician anesthesiologist licensed by the Texas State Board of Medical Examiners, or a Certified Registered Nurse Anesthetist (CRNA) licensed in Texas.

(2) **Standard of care requirements. Each dentist must maintain the minimum standard of care as detailed in rule 109.173 of this title (relating to Minimum Standard of Care) and shall in addition:**[professional requirements are as follows]

(A) **adhere to the clinical requirements as detailed in subsection (c)(3) of this section;** [has completed a minimum of one year of advanced training in anesthesia and related academic subjects beyond the undergraduate dental school level in a training program as described in Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry" of the American Dental Association Council on Dental Education; or]

(B) **maintain a parenteral deep sedation and/or general anesthesia consent for each dental patient on whom each procedure is performed, which consent shall specify that the risks related to the procedure include cardiac arrest, brain injury and death:** [has completed an approved graduate program by the Commission on Dental Accreditation of the American Dental Association where training to competency in general anesthesia is a minimum standard in the training guidelines and maintains an equivalency to one year of anesthesia training (oral and maxillofacial surgery); or]

(C) **maintain an adequate, time oriented, written anesthetic record which shall record dosages of anesthetic agents utilized and shall include physiologic vital sign monitoring during the course of the procedure;**[has completed the requirements for admission to and has passed the fellowship exam in the American Dental Society of Anesthesiology.]

(D) maintain continuous personal supervision of the anesthetic procedure and patient vital sign monitoring during the course of the procedure;

(E) maintain under continuous direct supervision a minimum of two auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of parenteral deep sedation and/or general anesthesia;

(F) maintain current certification in basic cardiopulmonary resuscitation for the assistant staff by having them pass a course sponsored by the American Heart Association or the American Red Cross;

(G) not allow a parenteral deep sedation and/or general anesthesia procedure to be performed in his/her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit for the procedure being performed issued by the State Board of Dental Examiners.

(3) Clinical Requirements. Each dentist must meet the following clinical requirements for utilization of parenteral deep sedation and/or general anesthesia: [Standard of care requirements. Each dentist shall utilize the following standard of care in addition to the minimum standards noted in 109.173 of this title (relating to Minimum Standard of Care):]

(A) **Patient Evaluation. Patients subjected to parenteral deep sedation/general anesthesia must be suitably evaluated prior to the start of any sedative/anesthetic procedure. In healthy or medically stable individuals (ASA I, II) this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability (ASA III, IV), consultation with their primary care physician or consulting medical specialist regarding potential procedure risk is desirable.** [maintain an informed deep sedation/general anesthesia consent by each dental patient on whom this technique is performed, which consent shall specify that the risks related to the procedure include brain damage and death;]

(B) **Pre-Procedure preparation, informed consent:**[maintain an adequate written anesthesia record which shall include, but shall not necessarily be limited to, physiologic vital signs and all medications administered during the course of the procedure;]

(i) **the patient and/or guardian must be advised regarding the procedure associated with the delivery of any sedative agents and the appropriate informed consent should be obtained;**

(ii) **if inhalation equipment is used in conjunction with parenteral conscious sedation, the equipment must be evaluated for proper operation and delivery of inhalation agents prior to use on each patient;**

(iii) **determination of adequate oxygen supply must be completed prior to use with each patient;**

(iv) **baseline vital signs should be obtained unless the patient's behavior prohibits such determination;**

(v) **pre-treatment physical evaluation must be performed as deemed appropriate;**

(vi) **specific dietary restrictions must be delineated based on technique used and patient's physical status;**

(vii) **appropriate verbal or written instructions must be given to the patient and/or guardian;**

(viii) **an intravenous line which is secured throughout the procedure must be established.**

(C) **Personnel and Equipment Requirements:** [maintain personal supervision of the patient during the induction and maintenance of the anesthesia. When a certified registered nurse anesthetist (CRNA) provides the deep sedation/anesthesia care, he/she shall be under the direct supervision of the dentist. Delegation of personal supervision may occur if a second dentist or anesthesiologist is delivering the deep sedation/anesthesia care. Vital sign monitoring shall utilize visual and mechanical methods which shall include, but shall not necessarily be limited to, pulse rate, patient color/texture, blood pressure, respiration, blood and tissue oxygenation, and heart rhythm. Mechanical monitoring shall include a minimum of pulse oximetry and an electrocardioscope.]

(i) **a provider permitted to administer parenteral deep sedation and/or general anesthesia shall be designated to be in charge of the administration of anesthesia care;**

(ii) **two additional individuals who are currently certified in basic cardiopulmonary resuscitation or its equivalent, one of whom is trained in patient monitoring shall be present for the delivery of anesthesia care;**

(iii) **when the same individual administering the parenteral deep sedation and/or general anesthesia is performing the dental/oral and maxillofacial procedure, one of the additional two individuals present for the delivery of anesthesia care must be trained in patient monitoring;**

(iv) **equipment suitable to provide advanced airway management and advanced life support should be on premises and available for use.**

(D) **Monitoring and Documentation. Maintain personal supervision of the patient during the induction and maintenance of parenteral deep sedation and/or general anesthesia and for a period of time necessary to establish pharmacologic and physiologic vital sign stability. When a Certified Registered Nurse Anesthetist (CRNA) provides the anesthesia care, he/she can be under the direct supervision of the dentist. Delegation of personal supervision may occur if a second dentist or anesthesiologist is delivering the anesthesia care.** [maintain original certification in advanced cardiac life support from a course sponsored by the American Heart Association. The dentist shall require his/her assistant staff to maintain current certification in basic life support as obtained by courses offered by the American Heart Association or the American Red Cross;]

(i) **Oxygenation. Color of mucosa, skin or blood should be continually evaluated. Oxygenation saturation must be evaluated continuously by pulse oximetry;**

(ii) **Ventilation. Intubated patient - must auscultate breath sounds and monitor of end-tidal CO2. Non-intubated patient - auscultation of breath sounds or monitoring of end-tidal CO2;**

(iii) **Circulation. Continuous EKG monitoring of all patients throughout the procedure with electrocardioscopy must occur. Must take and record blood pressure and pulse continually at least every five minutes;**

(iv) **Temperature. A device capable of measuring body temperature should be readily available, if needed, during the administration of parenteral deep sedation/general anesthesia. When agents implicated in precipitating malignant hyperthermia are utilized, continual monitoring of body temperature must be performed;**

(v) **Documentation. Appropriate time-oriented anesthetic record must be maintained. Individuals present during the administration of parenteral deep sedation/general anesthesia should be documented.**

(E) **Recovery and Discharge:** [maintain the necessary emergency equipment and medications to perform advanced cardiac life support under the guidelines of the American Heart Association (airway equipment, required intravenous equipment and medication, defibrillator, electrocardioscope, etc.]

(i) **oxygen and suction equipment must be immediately available in the recovery area and/or operatory;**

(ii) **continual monitoring of oxygenation, ventilation, circulation and temperature, as indicated, when the anesthetic is no longer being administered, i.e., the patient must have continuous supervision until oxygenation, ventilation, circulation and temperature, as indicated, are stable and the patient is appropriately responsive for discharge from the facility;**

(iii) **the dentist must determine and document that oxygenation, ventilation, circulation and temperature, as indicated, are stable prior to discharge;**

(iv) **the dentist must explain and document postoperative instructions to the patient and/or guardian at the time of discharge;**

(v) **the dentist must determine that the patient has met discharge criteria prior to leaving the office.**

(F) **Special situations include multiple/combination techniques and types of special patients:**[maintain a minimum of two auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of deep sedation/general anesthesia; and]

(i) **In selected circumstances, parenteral deep sedation/general anesthesia may be utilized without first establishing an indwelling intravenous line. These circumstances include parenteral deep sedation/general anesthesia for very brief procedures, or brief periods of time, which, for example, may occur in some pediatric patients; or the establishment of intravenous access after parenteral deep sedation/general anesthesia has been induced due to poor patient cooperation.**

(ii) **Due to the fact that many dental patients undergoing parenteral deep sedation/general anesthesia are mentally and/or physically challenged, it is not always possible to have a comprehensive physical examination or appropriate laboratory tests prior to administering care. When these situations occur, the dentist responsible for administering the parenteral deep se-**

dation/general anesthesia should document the reasons preventing the recommended preoperative management.

(G) **Emergency Management:** [not allow a deep sedation/general anesthesia procedure to be performed on a dental patient in his/her office by a certified registered nurse anesthetist (CRNA) unless the dentist maintains a permit for deep sedation/general anesthesia issued by the Texas State Board of Dental Examiners]

(i) **the anesthesia permit holder/provider is responsible for the anesthetic management, adequacy of the facility and treatment of emergencies associated with the administration of parenteral deep sedation and/or general anesthesia including immediate access to pharmacologic antagonists and appropriately sized equipment for establishing a patent airway and providing positive pressure ventilation with oxygen;**

(ii) **advanced airway equipment, resuscitation medications and a defibrillator must also be immediately available;**

(iii) **appropriate pharmacologic agents must be immediately available if known triggering agents of malignant hyperthermia are part of the anesthesia plan.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709945
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: September 11, 1997
For further information, please call: (512) 463–6400

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Chapter 114. Extension of Duties of Auxiliary Personnel Dental Assistants

22 TAC §114.2

The State Board of Dental Examiners proposes new rule §114.2, concerning definitions.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §114.2 communicates unambiguously that certain procedures performed with dental lasers are irreversible and may not be performed by dental assistants.

There will be no effect on small and large businesses. The effect on persons who are required to comply with the rule as proposed will be to prohibit dental assistants from performing a dental procedure that they may have been performing.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997.

The new rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act and Article 4551e and 4551e-1 which provide that the State Board of Dental Examiners may adopt rules relating to the practice of dental hygiene and employment of dental assistants.

The proposed new rule does not affect other statutes, articles, or codes.

§114.2. Definition.

The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Irreversible: an act that is "irreversible" is not capable of being reversed or corrected. This term includes, but is not limited to the result of intra-oral use of any laser for any purpose including all or part of a whitening process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 31, 1997.

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Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: September 11, 1997
For further information, please call: (512) 463–6400

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Chapter 115. Extension of Duties of Auxiliary Personnel Dental Hygiene

22 TAC §115.1

The State Board of Dental Examiners proposes amendments to §115.1, concerning definitions.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §115.1 communicates unambiguously that certain procedures performed with dental lasers are irreversible and may not be performed by dental hygienists.

There will be no effect on small and large businesses. The effect on persons who are required to comply with the rule as proposed will be to prohibit dental hygienists from performing a dental procedure that they may have been performing.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 and 4551d which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4551e and 4551e-1 which provide that the State Board of Dental Examiners may adopt rules relating to the practice of dental hygiene and employment of dental assistants.

The proposed amended rule does not affect other statutes, articles, or codes.

§115.1. Definitions.

The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

Irreversible -an act that is "irreversible" is not capable of being reversed or corrected. This term includes, but is not limited to, the result of intra-oral use of any laser for any purpose including all or part of a whitening process.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: September 11, 1997
For further information, please call: (512) 463–6400

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22 TAC §115.4

The State Board of Dental Examiners proposes new §115.4, concerning placement of site specific subgingival medicaments.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the rule.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that §115.4 will provide that a dental hygienist who has been trained appropriately as determined by the employing dentist, may place certain subgingival medicaments under the direct supervision of a licensed dentist.

There will be no effect on small and large businesses. The effect on persons who are required to comply with the rule as proposed shall be that dental hygienists shall undergo appropriate training as directed by their employer dentist prior to placing and removing site specific subgingival medicaments.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments and requests for public hearing must be received by the State Board of Dental Examiners on or before September 11, 1997.

The new rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act; and Article 4551e which provide that the State Board of Dental Examiners may adopt rules relating to the practice of dental hygiene.

The proposed new rule does not affect other statutes, articles, or codes.

§115.4. Placement of Site Specific Subgingival Medicaments.

Pursuant to Article 4551e, Section 1 (d), the placement and removal of site specific subgingival medicaments may be delegated to a Texas licensed dental hygienist under the direct supervision of, and in the office of, a Texas licensed dentist, only after scaling and root planing.

(1) Site specific subgingival medicaments are considered to be of "topical" nature and are agents approved for use by the Food and Drug Administration (FDA).

(2) The responsibility for diagnosis, treatment planning, the prescription of therapeutic measures, and re-evaluation, shall remain with a Texas licensed dentist and may not be delegated to any dental hygienist or dental assistant.

(3) The placement of site specific subgingival medicaments may not be assigned to a dental assistant.

(4) The Texas licensed dentist shall be responsible for identifying, selecting, and obtaining training that, in the dentist's reasoned opinion, will bring the dentist and dental hygienist to clinical competency prior to delegating the application of site specific subgingival medicaments to a dental hygienist.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 31, 1997.

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Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
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For further information, please call: (512) 463–6400

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Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

Professional Practices

22 TAC §501.11

The Texas State Board of Public Accountancy proposes an amendment to §501.11, concerning Independence.

The proposed amendment to §501.11 states that a CPA's independence may be impaired if the CPA is supervising an individual pursuant to §511.124.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be a clear understanding by consumers, CPAs and clients that supervising a CPA applicant under §511.124 may impair the CPA's independence. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§501.11. Independence.

(a) A certificate or registration holder who is performing an engagement in which the certificate or registration holder will issue a report on financial statements of any client (other than a report in which lack of independence is disclosed) must be independent with respect to the client in fact and in appearance.

(b) Independence will be considered to be impaired if, for example, during the period of his professional engagement or at the time of expressing an opinion, the certificate or registration holder:

(1) had or was committed to acquire any direct or material indirect financial interest in the client;

(2) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client;

(3) had any joint closely-held business investment with the client or any officer, director, partner, or principal stockholder thereof which was material in relation to the net worth of the certificate or registration holder; or

(4) had any loan to or from the client or any officer, director, partner, or principal stockholder thereof other than certain "grandfathered loans" and "other permitted loans" which will not be considered to impair independence.

(A) Grandfathered loans - Loans from a financial institution made under that institution's normal lending procedures, terms, and requirements, and that meet the other specified conditions stated herein. Grandfathered loans must, at all times, be current as to all terms and such terms shall not be renegotiated after the latest of the dates in clauses (i)-(iv) of this subparagraph. Grandfathered loans include those which:

(i) existed as of January 1, 1997;

(ii) were obtained from a financial institution prior to its becoming a client requiring independence;

(iii) were obtained from a financial institution for which independence was not required and that were later sold to a client for which independence is required; or

(iv) were obtained from a firm's financial institution client requiring independence, by a borrower prior to his or her becoming a member of the firm or registration holder, such as:

(I) loans obtained by the certificate or registration holder which are not material to the net worth of the borrower;

(II) home mortgages; and

(III) other secured loans in which the collateral must equal or exceed the remaining balance of the loan at January 1, 1997, and at all times thereafter.

(B) Other permitted loans - Personal loans obtained from a financial institution client from which independence is required which were made under that institution's normal lending procedures, terms and requirements. Such loans must, at all times, be kept current as to all terms. Other permitted loans include:

(i) automobile loans and leases collateralized by the automobile;

(ii) loans of the surrender value under terms of an insurance policy;

(iii) loans fully collateralized by cash deposits at the same financial institution; and

(iv) credit cards and cash advances on checking accounts with an aggregate balance not paid currently of $5,000 or less.

(C) Collateralized loans when such loans are equal or exceed the remaining balance of the loan on January 1, 1997, and at all times thereafter.

(c) Independence also will be considered to be impaired if, during the period covered by the financial statements, during the period of the professional engagement, or at the time of issuing his report, the certificate or registration holder:

(1) was connected with the client as a promoter, underwriter, or voting trustee, a director or officer, or in any capacity equivalent to that of a member of management or of any employee;

(2) was a trustee for any pension or profit-sharing trust of the client;

(3) receives from a third party, or had a commitment to receive from the client or third party, with respect to services or products procured or to be procured by the client, other compensation which was material in relation to the aggregate normally-recurring fees charged annually to the client for reports on financial statements; [or]

(4) had a commitment from the client for a contingent fee in violation of §501.15 (relating to Services for Fees) of this chapter**; or**[.]

(5) had an engagement to provide for the supervision of an individual as provided for in §511.124(a)(1) of this title (relating to Acceptable Supervision).

(d) Independence will be presumed to be impaired if the certificate or registration holder performs audit services, other than for charitable organizations, for a fee that is less than the direct labor cost reasonably expected, at the time the engagement was accepted, to be incurred in performing such services. For this purpose direct labor costs means the total compensation of the person or persons expected to perform the service for the time they are expected to serve on the audit plus all payroll expenses related to such compensation.

(e) A certificate or registration holder's independence may be impaired by a close relative's association with a client. Close relatives are defined as spouses and dependent persons, whether or not related, and defined as dependent and non-dependent children, grandchildren, stepchildren, brothers, sisters, parents, grandparents, parents-in-law, and their respective spouses.

(1) Certificate and registration holders must consider whether the strength of personal and business relationships between the certificate or registration holder and the close relative would lead a reasonable person who is aware of all the facts to conclude that the situation poses an unacceptable threat to the certificate or registration holder's objectivity and appearance of independence. In reaching this conclusion, the certificate or registration holder should consider the specific association with the client.

(2) A certificate or registration holder's independence will be presumed to be impaired with respect to a client if:

(A) during the period of the professional engagement or at the time of expressing an opinion, the certificate or registration holder participating in the engagement has knowledge of a close relative who has a material financial interest in the client;

(B) during the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion:

(i) the certificate or registration holder participating in the engagement has a close relative who could exercise significant influence over the operative, financial, or accounting policies of the client or is otherwise employed in a position in which the close relative's activities are normally an element of or subject to significant internal accounting controls;

(ii) a proprietor, shareholder, or individual in a managerial position in a certificate or registration holder's office, has a close relative who could exercise significant influence over the client's operating, financial, or accounting policies, if that proprietor, shareholder or individual participates in a significant portion of the engagement.

(f) The examples of impaired independence described in subsections (b)-(e) of this section are not intended to be all-inclusive.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710011
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: September 11, 1997
For further information, please call: (512) 505–5566

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Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Education, Experience, Educational Programs, Time Periods and Type of License

22 TAC §535.66

The Texas Real Estate Commission proposes an amendment to §535.66, concerning schools accredited by the commission. The amendment would clarify the restrictions on the recruiting or solicitation of prospective salespersons on the school premises. As proposed the amendment would prohibit recruiting or solicitation in the classroom during class time but would not affect recruiting or solicitation of prospective salespersons elsewhere on the school premises. The clarification would assist schools in complying with the section and resolve issues relating to as to use of vacant classroom areas, lunchrooms, or other areas for recruiting or soliciting prospective salespersons.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the requirements for accredited schools. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties

The statute that is affected by this section is Texas Civil Statutes, Article 6573a.

§535.66. Educational Programs: Accreditation.

(a)-(ee) (No change.)

(ff) A school may not promote itself in such a manner as to state or imply that its students will achieve earning potential as a result of participation in the school's educational program. Except as provided by this section, no school may promote itself directly or indirectly as a job placement agency. A school participating

in a job retraining program recognized by federal, state, or local government may, however, provide job placement services to the extent the services are required by the program and may advertise its participation in the program. Schools are responsible to the commission for ensuring that instructors or other persons [associated with the school] do not recruit or solicit prospective **salespersons** [salesmen] **in a classroom during class time** [on the school premises].

(gg)-(ss) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709913
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: September 13, 1997
For further information, please call: (512) 465-3900

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Licensed Real Estate Inspectors

22 TAC §535.222

The Texas Real Estate Commission proposes an amendment to §535.222, concerning standards of practice for licensed inspectors. The amendment would delete language permitting inspectors to use inspection reports of their own design or those report forms required by a client. The amendment is proposed in connection with the commission's contemplated adoption of a series of standard inspection report forms which inspectors would be required to use unless federal law required a different form. Adoption of the amendment would not prohibit an inspector from providing a client with additional information as an attachment to any standard report form adopted by the commission.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency and reduction of discrepancies in inspection reports. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by this section is Texas Civil Statutes, Article 6573a.

§535.222. Standards of Practice.

(a) (No change.)

(b) Scope. The standards of inspection practice established by this section are the minimum levels of inspection practice required of inspectors for the accessible parts, components, and systems typically found in improvements to real property, excluding detached structures, decks, docks and fences. The inspection is of conditions which are present and visible at the time of the inspection. All mechanical and electrical equipment, systems, and appliances are operated in normal modes and operating range at the time of the inspection. The inspector shall observe, render an opinion and report which of the parts, components, and systems present in the property have or have not been inspected. The inspector's report must specifically indicate if the inspected parts, components or systems are not functioning or in need of repair. The inspector shall report on visible existing recognized hazards and shall report as in need of repair any recognized hazard specifically listed as such in this section. The report used by the inspector must address all of the parts, components, and systems contained in subsections (e)-(g) of this section and found in the property being inspected [, listed in the same order as they appear in this section. Provided, however, the inspector may use a form of report which is arranged differently than in the manner required by this section if use of a different form of report is required by an agency of the federal government or by a client who buys or sells properties in the due course of the client's business]. All written inspection reports must contain the name and license number of the inspector who performed the inspection. The inspector may provide a higher level of inspection performance than required by this section and may inspect parts, components, and systems in addition to those described by this section. In the event of a conflict between a specific provision and a general provision, the specific provision shall control. These standards do not apply to the following:

(1)-(3) (No change.)

(c)-(h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709912
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: September 13, 1997
For further information, please call: (512) 465-3900

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22 TAC §535.223

The Texas Real Estate Commission proposes new §535.223, concerning standard inspection report forms. The new section would adopt by reference a series of inspection report forms and require inspectors licensed by the commission use those forms when performing inspections of residential properties. The forms were developed at the request of the commission by the Texas Real Estate Inspector Committee, an advisory

committee of nine professional inspectors. Adoption of standard inspection report forms is required for the commission to comply with the provisions of Senate Bill Number 1100, 75th Legislature (1997), which requires the commission to adopt such forms no later than October 1, 1997.

In many residential real estate transactions, an inspector licensed by the commission will perform an inspection of the home. Written inspection reports often are relied upon by buyers, sellers, lenders, and real estate licensees, and may provide the basis for repairs to be performed as a condition of closing the sale of the home. Inspection reports which do not accurately or clearly report the condition of the property may cause confusion and disputes between the parties to the sales contract. The report forms which would be adopted by the section provide a means of standardizing the reporting of real estate inspections and ensuring that the inspection reports comply with the commission's rules regarding the required content of inspection reports. For example, the commission's rules require the inspector's report to include an opinion in the report on the performance of the foundation, not merely whether the foundation is in need of repair; the proposed Property Inspection Report, form REI Number 7-0, contains a specific provision to cause the inspector to report an opinion on the performance of the foundation.

The proposed section would permit licensed inspectors to reproduce the forms from printed copies obtained from the commission or by computer. When reproducing the form, however, the licensee would not be permitted to alter the appearance of the form. The text must be reproduced verbatim. The section would permit the inspector to add additional pages if necessary to report on systems not contained in the form or space provided in the form is inadequate for a full reporting. Failure to comply with the section would be grounds to suspend or revoke the license of the inspector or to impose an administrative penalty.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency in the writing of inspection reports for consumers and enhanced compliance with inspection standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section, other than the cost of copies of the forms, which may contain more pages than the report forms used by individual inspectors.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new rule is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by this section is Texas Civil Statutes, Article 6573a.

§535.223. Standard Inspection Reports.

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission in 1997 and published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Property Inspection Report, REI Number 7-0;

(2) Optional Systems Property Inspection Report (Gas Lines), REI Number 8-0;

(3) Optional Systems Property Inspection Report (Outbuildings), REI Number 9-0;

(4) Optional Systems Property Inspection Report (Outdoor Cooking Equipment), REI Number 10-0;

(5) Optional Systems Property Inspection Report (Lawn and Garden Sprinkler System), REI Number 11-0;

(6) Optional Systems Property Inspection Report (Private Water Wells), REI Number 12-0;

(7) Optional Systems Property Inspection Report (Individual Private Sewage Systems), REI Number 13-0;

(8) Optional Systems Property Inspection Report (Built-in Security and Fire Protection Equipment), REI Number 14-0; and

(9) Optional Systems Property Inspection Report (Swimming Pools and Equipment), REI Number 15-0.

(b) Except when federal law requires a different report, each inspector licensed by the commission shall complete all applicable portions of Property Inspection Report REI Number 7-0 and, if an optional system is to be included, the appropriate Optional Systems Property Inspection Report, REI Nos. 8-0 through 15-0 ("the forms") and provide a copy of the forms to any person for whom the inspector has performed an inspection of residential property.

(c) Inspectors may reproduce the forms from printed copies obtained from the commission and may reproduce the forms by computer, provided the forms are reproduced verbatim and the spacing, length of blanks, borders, fonts and placement of text on the page appear to be identical to that used by the commission in the printed version of the forms. Inspectors may not delete text from the forms or add additional text to the forms other than to insert information in the spaces provided for that purpose.

(d) When using either a printed version of the forms or a version reproduced by computer, the licensee shall comply with §535.222 of this title (relating to Standards of Practice). If an part, component, or system contained in the forms is not present in the property or has not been inspected under the departure provisions of §535.222, the inspector shall make an appropriate notation on the forms, clearly indicating the reason the part, component or system has not been inspected. If necessary to report the inspection of a part, component or system not contained in the form, or space provided on the forms is inadequate for a complete reporting of the inspection, such as when the inspector provides a higher level of inspection performance than that required by §535.222, the inspector may attach additional pages to the forms.

(e) Failure to comply with this section is grounds for the suspension or revocation of an inspector's license or the imposition of an administrative penalty by the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709914
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: September 13, 1997
For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

Part VII. Texas Medical Disclosure Panel

Chapter 601. Informed Consent

25 TAC §601.2

The Texas Medical Disclosure Panel (panel) proposes an amendment to §601.2, concerning informed consent for medical treatments and surgical procedures requiring full disclosure (List A) of the possible risks and hazards involved. Section 601.2 establishes a list of the medical treatments and surgical procedures requiring full disclosure by a physician or health care provider to a patient or person authorized to consent for the patient.

The Medical Liability and Insurance Improvement Act of Texas, Texas Civil Statutes, Article 4590i, Subchapter F, requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. This amendment adds risks and hazards that the panel has determined must be disclosed for abdominal endoscopic/laparoscopy procedures and endoscopic surgery of the thorax.

Bernie Underwood, Chief of Staff Services, Health Care Quality and Standards, has determined that for the first five-year period the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing the section.

Ms. Underwood also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be to provide the public with the risks and hazards associated with abdominal endoscopy/laparoscopy procedures and endoscopic surgery of the thorax. There will be minimal additional costs to small businesses (i.e., physicians, medical care providers) estimated to be between $50-$250 each year depending on their costs to reproduce the disclosure form to add the new risks and hazards. There are no economic costs to persons (other than physicians or medical care providers shown is this cost note as small businesses) who are required to comply with the section as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to the Texas Medical Disclosure Panel, Attention: Julia R. Beechinor, Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, Telephone (512) 834-6647. Comments will be accepted for a period of 30 days after publication of the proposal in the *Texas Register*.

The amendment is proposed under the Medical Liability and Insurance Improvement Act of Texas, Texas Civil Statutes, Article 4590i, §6.04, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form for the treatments and procedures which do require disclosure.

The amendment affects the Texas Civil Statutes, Article 4590i.

§601.2. Procedures Requiring Full Disclosure-List A.

(a)-(f) (No change.)

(g) Female genital system treatments and procedures.

(1)-(3) (No change.)

(4) **Reserved.** [Abdominal endoscopy (peritoneoscopy, laparoscopy).]

[(A) Puncture of the bowel or blood vessel.]

[(B) Abdominal injection and complications of infection.]

[(C) Abdominal incision and operation to correct injury.]

(5)-(13) (No change.)

(h)-(r) (No change.)

(s) Endoscopic surgery.

(1) Abdominal endoscopy/laparoscopy procedures.

(A) Damage to intra-abdominal structures (e.g., bowel, bladder, blood vessels, or nerves).

(B) Intra-abdominal abscess and infectious complications.

(C) Trocar site complications (e.g., hematoma/bleeding, leakage of fluid, or hernia formation).

(D) Conversion of the procedure to an open procedure.

(E) Cardiac dysfunction.

(F) All risks and hazards of the same surgery when done as an open procedure, if any risks and hazards are listed in this section.

(2) Endoscopic surgery of the thorax.

(A) Postoperative pneumothorax.

(B) Subcutaneous emphysema.

(C) Conversion of the procedure to an open procedure.

(D) All risks and hazards of the same surgery when done as an open procedure, if any risks and hazards are listed in this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on July 31, 1997.

TRD-9709950
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners
Earliest possible date of adoption: September 11, 1997
For further information, please call: (512) 463–6400

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) proposes amendments to §§15.100, 15.435, 15.443, 15.450, 15.460, and 15.621, concerning definitions, liquid resources, resources essential to self-support (real and personal properties), general principles concerning income, income exemptions, and failure to furnish income, in its Medicaid Eligibility chapter. The purpose of the amendments is to clarify policy to ensure consistent application statewide.

Terry Trimble, interim commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Trimble also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be consistent application of policy statewide. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Client Eligibility section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-255, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register* .

Subchapter A. General Information

40 TAC §15.100

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and 32.001-32.042.

§15.100. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

Medical care facility - A nursing facility (Title XIX, Title XX, or private), hospital, ICF-MR, or an institution for mental diseases (IMD).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709974
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1997
For further information, please call: (512) 438–3765

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Subchapter D. Resources

40 TAC §15.435, §15.443

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.030 and 32.001-32.042.

§15.435. Liquid Resources.

(a)-(f) (No change.)

(g) Promissory notes, loans, and property agreements. A negotiable promissory note, loan, or property agreement is a resource. Negotiable means that the owner (lender) has the legal right to sell the instrument or that he possesses a transferable interest in the instrument that can be converted to cash. The terms of the loan may be in writing or they may be an informal oral agreement. A formal written loan agreement is a form of promissory note. **A note cannot be excluded under the $6,000/6.0% policy specified in §15.443 of this title (relating to Resources Essential to Self-support (Real and Personal Properties). This exclusion applies only to real property or a degree of interest in real property, such as mineral rights.**

(h) (No change.)

(i) SSI and RSDI retroactive lump sum payments. SSI and RSDI retroactive lump sum payments are excluded from countable resources for six months after the month of receipt. [If these payments are received during the period from October 1, 1987, through September 30, 1989, they are excludable for nine months after the month of receipt.] The exclusion applies only to the

payments. If the client spends the payments, the exclusion does not apply to items purchased with the payments unless those items are otherwise excludable. This is true even if the exclusion period has not expired. **Otherwise excludable funds must be identifiable in order to be excluded. Identifiability does not require that the excluded funds be kept physically apart from other funds (such as, in a separate bank account). The department assumes, when withdrawals are made from an account with commingled funds in it, that nonexcluded funds are withdrawn first, leaving as much of the excluded funds as possible in the account. If excluded funds are withdrawn, the excluded funds left in the account can be added to only by deposits of subsequently received funds that are excluded under the same provision and excluded interest. Interest earned on excluded lump sum payments from SSI and RSDI is income in the month of receipt and a resource thereafter. The client or responsible party must provide verification of the retroactive payment and all expenditures from it.** [The client must keep money from retroactive SSI and RSDI payments separate from other resources. If payments are combined with other resources, the client or responsible party has 30 days to separate funds and to provide documentation of which portion of the combined funds is to be excluded. The client or responsible party must also provide documentation of the amount of the payments and any expenditures. If the payments cannot be distinguished from other resources, they are counted toward the appropriate resource limit.]

(j)-(l) (No change.)

(m) Joint bank accounts.

(1) If a client has a joint bank account and can legally withdraw funds from it, all the funds in the account are considered a resource to the client. If two or more eligible clients have a joint account with unrestricted access, the department considers that each owns an equal share of the funds. Eligible clients include any qualified Medicare Beneficiaries and Medicaid clients. This equal ownership also applies when income is being diverted from the eligible spouse to the ineligible spouse and when income is deemed from an ineligible spouse or parent. **In spousal diversion cases after the initial 12-month eligibility period, if the account has not been separated, the funds in the account are divided equally between the spouses for resource eligibility purposes beginning with the 13th month.** If a client is determined ineligible because of excess funds in a joint account, the client must be allowed an opportunity to disprove the presumed ownership of all or part of the funds. He must also be allowed to disprove ownership of joint accounts that do not currently affect his eligibility but may in the future. Transfer-of-resources policy does not apply when a client changes a joint bank account to establish separate accounts in order to reflect correct ownership of and access to the funds.

(2) (No change.)

(n)-(q) (No change.)

§15.443. Resources Essential to Self-support (Real and Personal Properties).

(a) Property essential to self-support. The department may exclude as a resource property essential to self-support but count the income that the property produces. To be considered as a excludable resource, business property (including personal, business- related property) must be in current use in the client's trade, business, or employment. If the property is not in current use, the department excludes the property only if it has been used by the client in the past, and if it is reasonable to expect that it will be used again.

(1)-(4) (No change.)

(5) Income-producing nonbusiness property. In some instances, a client may own more than one income-producing nonbusiness property. To be excludable, each property must separately produce a 6.0% net annual rate of return. A maximum of $6,000 may be excluded from the combined equity value of all properties producing a 6.0% net annual rate of return. The combined equity value in excess of $6,000 is a resource. **A note cannot be excluded under the $6,000/6.0% policy. This exclusion applies only to real property or a degree of interest in real property, such as mineral rights.**

(b)-(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709975
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1997
For further information, please call: (512) 438–3765

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Subchapter E. Income

40 TAC §15.450, 15.460

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.030 and 32.001-32.042.

§15.450. General Principles Concerning Income.

(a)-(d) (No change.)

(e) Wages and salaries from Title V of the Older Americans Act, such as Green Thumb and Senior Texan Employment Program (STEP), are countable earned income.

§15.460. Income Exemptions.

(a) (No change.)

(b) The Texas Department of Human Services exempts income that a client receives from any of the following sources:

(1)-(16) (No change.)

(17) salaries, value of meals, and travel allowances to participate in the Retired Senior Volunteer Program and in the Foster Grandparent Program of Title II of the Domestic Volunteer Service Act of 1973 (formerly Title VI of the Older Americans Act). Also included are payments from Title III of the same act,

which include the Service Corps of Retired Executives (SCORE), the Active Corps of Executives (ACE), and the Action Cooperative Volunteer Program (ACV). **Wages and salaries from Title V of the Older Americans Act, such as Green Thumb and Senior Texan Employment Program (STEP) are not exempt income.**

(18)-(35) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709976
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1997
For further information, please call: (512) 438–3765

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Subchapter G. Application for Medicaid

40 TAC §15.621

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and 32.001-32.042.

§15.621. Failure to Furnish Information.

(a) (No change.)

(b) The eligibility specialist must not deny the application **or redetermination** on failure to furnish information before completing the following:

(1)-(4) (No change.)

(c)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709977
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: October 1, 1997
For further information, please call: (512) 438–3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 15. Transportation Planning and Programming

Subchapter A. Transportation Planning

43 TAC §§15.1, 15.2, 15.4

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Transportation proposes the repeal of §15.1, §15.2 and §15.4, concerning transportation planning. These sections are no longer necessary due to the simultaneous proposed adoption of the re-enacted subject matter in new §§15.1-15.8, concerning this same subject.

Frank J. Smith, Director, Budget and Finance Division, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the repeals.

Mr. Smith has certified that there will be no significant impact on local economies or overall employment as a result of repealing the sections.

Alvin Luedecke, Jr., P.E., Director, Transportation Planning and Programming Division, has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be improved coordination among the department, transit agencies, and existing and future metropolitan planning organizations in the development of transportation planning processes, plans, and programs, and more efficient and effective transportation planning for highway users with the implementation of the new rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals.

Written comments on the repeals may be submitted to Alvin Luedecke, Jr., P.E., Director, Transportation Planning and Programming Division, Texas Department of Transportation, P.O. Box 149217, Austin, Texas 78714-9217. Comments may also be submitted by fax to Mr. Luedecke at (512) 486-5040. The deadline for receipt of comments will be 5:00 p.m. on September 12, 1997.

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, Transportation Code, §201.103, which requires the Texas Transportation Commission to plan and make policies for the location, construction and maintenance of a comprehensive system of state highways and public roads, and Transportation Code, §201.601, which requires the Texas Department of Transportation to develop, in cooperation with other agencies and political subdivisions that have responsibility for transportation, a state transportation plan that contains all modes of transportation.

The repealed sections do not affect other statutes, articles or codes.

§15.1. Funding.

§15.2. Action Plan.

§15.4. Transportation Systems Planning.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710066

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: September 13, 1997

For further information, please call: (512) 463-8630

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43 TAC §§15.1-15.8

The Texas Department of Transportation proposes new §§15.1-15.8, concerning transportation planning.

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) established new requirements related to transportation planning, particularly in regards to metropolitan transportation planning. Title 23, United States Code, §134, and Title 49, United States Code, §§5303-5306, incorporate the ISTEA's planning requirements and require the designation of a metropolitan planning organization (MPO) in each urbanized area as defined by the U.S. Bureau of the Census. These sections also require that each metropolitan area have a continuing, cooperative, and comprehensive planning process that results in transportation plans and programs that consider all transportation modes.

Proposed adoption of the new sections is necessary in order to be consistent with the transportation planning requirements promulgated by the ISTEA, as contained in Titles 23 and 49, United States Code, and 23 C.F.R. Part 450, and to prescribe the policies and procedures governing the creation of MPOs and metropolitan planning area boundaries and the responsibilities of MPOs and the state related to the development of transportation planning processes, plans, and programs. Proposed adoption of the new sections is also necessary to replace the existing §§15.1, 15.2, and 15.4, concerning transportation planning, which are being contemporaneously proposed for repeal.

Section 15.1 describes the purpose and scope of the new sections and describes the authority for establishing policies and procedures governing the development of transportation planning processes, plans, and programs in Texas.

Section 15.2 defines words and terms used in the subchapter.

Section 15.3 prescribes the organization, structure, and responsibilities of metropolitan planning organizations (MPOs), including identifying procedures to designate and redesignate an MPO, prescribes how metropolitan planning area boundaries are determined and amended, describes the membership of MPOs, describes the nature and scope of agreements between MPOs and other agencies, and describes the responsibilities for cooperation and coordination between MPOs and other entities relating to transportation planning.

Section 15.4 prescribes a unified planning work program (UPWP), discusses the requirements and roles of MPOs and other organizations in the development and approval of the UPWP, describes how the department will monitor work programs, and describes limitations on the use, expenditure, and distribution of federal planning funds for planning work.

Section 15.5 prescribes responsibilities relating to the metropolitan planning process, including identifying the minimum required elements of the planning process, describing how the public will be involved in the planning process, identifying requirements when major metropolitan transportation investments are being considered, and describes how the metropolitan transportation planning process and management systems are related.

Section 15.6 prescribes the requirements of the metropolitan transportation plan, including development of the plan and review and updating requirements, public involvement requirements, and conformity requirements in transportation management areas.

Section 15.7 prescribes the requirements of the transportation improvement program (TIP), including how the program should be developed, identifying what types of projects are included in the TIP and which projects may be excluded, identifies the requirements for consistency and conformity of the TIP with the metropolitan transportation plan, prescribes the format of the TIP, the required financial plan, and how the TIP may be updated and modified, prescribes the approval procedures and requirements for the TIP, prescribes a public involvement process, prescribes procedures for selecting projects identified in the TIP, and describes the relationship of the TIP to the statewide transportation improvement program.

Section 15.8 prescribes the requirements of the statewide transportation improvement program (STIP), including how the program should be developed, identifying what types of projects are included in the STIP, identifies funding for the STIP, prescribes the financial plan required for a STIP and how the STIP may be updated and modified, prescribes the approval procedures for the STIP, prescribes a public involvement process, and prescribes procedures for selecting projects identified in the STIP.

Frank J. Smith, Director, Budget and Finance Division, has determined that for the first five years the new sections are in effect, there will be fiscal implications for the state as a result of enforcing or administering the proposed sections. The anticipated estimated increase in costs to the state is $2,100,850 each year in fiscal years 1998-2002. There are also anticipated fiscal implications for local governments as a result of administering or enforcing the sections. The estimated increase in costs to local governments is $16,600,000 each year in fiscal years 1998-2002. Funding for the increased costs for local governments is funded entirely from federal and state funds. The estimated costs for the state includes the required state matching funds. There are no anticipated costs for persons to comply with the new sections as proposed.

Alvin Luedecke, Jr., P.E., Director, Transportation Planning and Programming Division, has certified that for each year of the first five years there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Mr. Luedecke has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be improved coordination among the department, transit agencies, and existing and future metropolitan planning organizations in the development of transportation planning processes, plans, and programs, and more efficient and effective transportation planning for highway users. There will be no effect on small businesses.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. The public hearing will be held at 9:00 a.m. on August 26, 1997, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director, Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed new sections may be submitted to Alvin Luedecke, Jr., P.E., Director, Transportation Planning and Programming Division, Texas Department of Transportation, P.O. Box 149217, Austin, Texas 78714-9217. Comments may also be submitted by fax to Mr. Luedecke at (512) 486-5040. The deadline for receipt of comments will be 5:00 p.m. on September 12, 1997.

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, Transportation Code, §201.103, which requires the Texas Transportation Commission to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads, and Transportation Code, §201.601, which requires the Texas Department of Transportation to develop, in cooperation with other agencies and political subdivisions that have responsibility for transportation, a statewide transportation plan that contains all modes of transportation.

The new sections do not affect other statutes, articles or codes.

§15.1. Purpose, Applicability, and Scope.

(a) Purpose. The United States Code, in Title 23, §134 and Title 49, §5303, requires the designation of a metropolitan planning organization (MPO) in each urbanized area and further requires that each metropolitan area have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs which consider all transportation modes and support community development and social goals. Similar transportation planning responsibilities are placed on the states by Title 23, §135. Under these sections, transportation plans and programs must lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient and economic movement of people and goods. Responsibility for statewide transportation planning and coordination has been delegated by the governor to the Texas Transportation Commission, which in turn has delegated these responsibilities to the executive director of the Texas Department of Transportation. In order to define for the state how it will coordinate the various activities required by 23 U.S.C. §134 and §135, and 49 U.S.C. §§5303-5306, involve the public in transportation decisions, and collaborate with the MPOs to ensure that state and regional plans and development programs are consistent, this subchapter prescribes minimum standards for metropolitan transportation planning, prescribes how the state and metropolitan planning organizations will develop transportation planning processes, plans, and programs, and ensures the effectiveness of statewide and metropolitan transportation planning and program development and the eligibility of the state to continue to receive federal transportation funds.

(b) Applicability. The provisions of this subchapter apply to all metropolitan planning organizations serving urbanized areas as defined by the U.S. Bureau of the Census with populations of at least 50,000 as well as to the Texas Department of Transportation and appropriate federally-funded publicly operated transit agencies.

(c) Scope. This subchapter incorporates by reference federal transportation planning laws and regulations. Words and terms defined in 23 U.S.C. §101(a) and 23 C.F.R. §450.104 and §500.503 are used in this subchapter as so defined.

§15.2. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Clean Air Act Amendments of 1990 (CAAA) - Amendments to the Clean Air Act of 1970 (CAA) (42 U.S.C. 7410 et seq.), including procedures that apply to all transportation plans, programs, and projects as they relate to air quality.

Commission - The Texas Transportation Commission.

Conformity - Clean Air Act requirements that transportation plans and transportation improvement programs in nonattainment or maintenance areas meet the intent of the Texas State Implementation Plan (SIP) and the U.S. Environmental Protection Agency (EPA) confor-

mity regulations contained in 40 C.F.R. Part 51. Emissions caused by transportation plans and programs in these areas must not exceed the level of motor vehicle emissions allowed in Texas' SIP and the EPA regulations.

Corridor - A broad geographical band with no predefined size or scale that follows a general directional flow connecting major sources of trips. It involves a nominally linear transportation service area that may contain a number of streets, highways, and transit route alignments.

Department - The Texas Department of Transportation.

District - One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

Environmental Protection Agency (EPA) - The federal agency primarily responsible for environmental protection, including air quality as it relates to this subchapter.

Executive Director - The executive director of the Texas Department of Transportation or his or her designee.

Federal discretionary program - Special set-aside funds to be included as line item discretionary projects designated by the United States Congress.

Federal Highway Administration (FHWA) - The federal agency primarily responsible for highway transportation.

Federal Transit Administration (FTA) - The federal agency primarily responsible for public mass transportation.

Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) - The transportation act passed by Congress that provides six year authorizations for development of a National Intermodal Transportation System which consists of all forms of transportation in a unified interconnected manner.

Major revision - An amendment to the Statewide Transportation Improvement Program involving a reallocation of funds between two or more districts or two or more metropolitan planning organizations or a metropolitan planning organization and a district.

Metropolitan planning organization (MPO) - The forum for cooperative transportation decision making for the metropolitan planning area. The MPO is also the organization that is responsible for carrying out the transportation planning process for the metropolitan area.

Metropolitan planning organization policy board - The forum and committee structure (e.g., Regional Transportation Council, Steering Committee, Policy Advisory Committee) established under Section 134 of Title 23, U.S. Code, Section 8 of the Federal Transit Act, and the Governor's Designation Agreement as the group responsible for giving an MPO overall transportation policy guidance.

Minimum allocation funds - Funds allocated by the U.S. Secretary of Transportation among the states under 23 U.S.C. §157(a).

Mobility projects - Transportation projects that add additional lanes to an existing facility and which have a length of at least one mile.

Rural transportation improvement program - A staged, multiyear, intermodal program of transportation projects which is developed by the department, in consultation with local officials, for areas of the state outside of the metropolitan planning area boundaries. The rural TIP includes a financially constrained plan that demonstrates how the program can be implemented.

Subarea - An area with no predefined size or scale that focuses on a non-linear part of a metropolitan area, such as an activity center or other geographic portion of a region.

Surface Transportation Program (STP) - The block grant type program established by 23 U.S.C. §133.

Texas Natural Resource Conservation Commission (TNRCC) - The state agency responsible for coordination of natural resources and air quality for the state, including development of the State Implementation Plan.

Transportation control measure (TCM) - Any measure used for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.

Unified Planning Work Program (UPWP) - The governing planning document, prepared by an MPO on an annual basis, which identifies the transportation planning work to be undertaken within the metropolitan planning area.

§15.3. Organization, Structure, and Responsibilities of Metropolitan Planning Organizations.

(a) Purpose. Under 23 U.S.C. §134 and 49 U.S.C. §5303, as implemented by 23 C.F.R. Part 450, Subpart C, a metropolitan planning organization must be designated in each urbanized area, and each MPO must have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs which consider all transportation modes and support metropolitan community development and social goals. This section describes the process for designating MPOs, adding members to an MPO, setting metropolitan planning area boundaries, coordinating metropolitan planning among MPOs, transit operators, and the department, and prescribes the responsibilities of MPOs.

(b) Designations, redesignations, and membership of MPOs.

(1) Designations.

(A) A designation of an MPO shall be by agreement between the executive director and local units of government representing 75% of the affected metropolitan population (including the central city or cities as defined by the Bureau of the Census), and shall be carried out in accordance with 23 C.F.R. §450.306. More than one MPO may be designated within an urbanized area only if the executive director determines that the size and complexity of the urbanized area makes designation of more than one MPO appropriate.

(B) Existing MPO designations remain valid until a new MPO is designated, unless revoked by the executive director and local units of government representing 75% of the population in the area served by the existing MPO in accordance with 23 C.F.R. §450.306(f). The central city must be among those desiring to revoke the MPO designation.

(2) Redesignations.

(A) The designation of a new MPO to replace an existing MPO shall occur by agreement of the executive director and affected local units of government representing 75% of the population in the entire metropolitan planning area. The central city(ies) must be among the units of local government agreeing to the redesignation.

(B) Redesignation of an MPO in a multistate metropolitan area requires the approval of the executive director

and the governor, or his or her designee, of the other state, and of local officials representing 75% of the population in the entire metropolitan planning area. The local officials in the central city must be among those agreeing to the redesignation

(C) Redesignation of an MPO covering more than one urbanized area requires the approval of the executive director and local officials representing 75% of the population in the metropolitan planning area covered by the current MPO. The local officials in the central city(ies) in each urbanized area must be among those agreeing to the redesignation.

(D) If the executive director and local officials decide to redesignate an existing MPO, but do not formally revoke the existing MPO designation, the existing MPO remains in effect until a new MPO is formally designated.

(3) Membership of MPOs. Adding membership (e.g., local elected officials and operators of major modes or systems of transportation, or representatives of newly urbanized areas) to the policy body or expansion of the metropolitan planning area does not automatically require redesignation of the MPO. To the extent possible, it is encouraged that this be done without a formal redesignation. The executive director and the MPO shall review the previous MPO designation, state and local law, MPO bylaws, and any other relevant documentation to determine if this can be accomplished without a formal redesignation.

(c) Metropolitan planning area boundaries.

(1) Minimum area. The metropolitan planning area boundary shall, at a minimum, cover the urbanized area(s) and the contiguous geographic area likely to become urbanized within the 20 year forecast period covered by the transportation plan, and shall include the boundaries required by 23 C.F.R. §450.308. Metropolitan planning area boundaries shall be limited to the boundaries approved by the executive director. For geographic areas designated as

metropolitan transportation plan and transportation improvement program shall be coordinated with other providers of transportation (e.g., sponsors of regional airports, maritime port operators, and rail freight operators).

(2) Metropolitan transportation plan. The MPO shall approve the metropolitan transportation plan and its periodic updates.

(3) Metropolitan transportation improvement program. The MPO and the executive director shall approve the metropolitan transportation improvement program and any amendments found to be in accordance with §15.7(h) of this title (relating to Transportation Improvement Programs).

(4) Coordination with State Implementation Plan development. In nonattainment or maintenance areas, the MPO shall coordinate the development of the transportation plan with the State Implementation Plan (SIP) development process, including the development of any transportation control measures (TCMs). The MPO shall develop or assist in developing the TCMs. The MPO shall not approve any metropolitan transportation plan or transportation improvement program which does not conform with the SIP, as determined in accordance with EPA conformity regulations.

(5) Metropolitan planning in areas with multiple MPOs. If more than one MPO has authority in a metropolitan planning area (including multistate metropolitan planning areas) or in an area which is designated as nonattainment or maintenance for transportation related pollutants, the MPOs, the executive director, and the governor, or his or her designee, of any other involved state shall cooperatively establish the boundaries of the metropolitan planning area (including the 20 year planning horizon and relationship to the nonattainment or maintenance areas) and the respective jurisdictional responsibilities of each MPO. The MPOs shall consult with each other and the states to assure the preparation of integrated plans and transportation improvement programs for the entire metropolitan planning area. While an individual MPO metropolitan transportation plan and transportation improvement program may be developed separately, each plan and transportation improvement program must be consistent with the plans and transportation improvement programs of other MPOs in the metropolitan planning area. For the overall metropolitan planning area, the individual MPO planning process shall reflect coordinated data collection, analysis, and development. In those areas where this provision is applicable, coordination efforts shall be initiated and the process and outcomes documented in subsequent transmittals of the Unified Planning Work Program and various planning products (e.g., the metropolitan transportation plan and transportation improvement program) to the department for further transmittal to the FHWA and the FTA.

§15.4. Unified Planning Work Program (UPWP).

(a) Planning activities. Under 23 C.F.R. §450.314, an MPO is required to document planning activities in a UPWP to indicate who will perform the work, the schedule for completing it, and all products that will be produced. The department is responsible for assisting in the development of the UPWP, approving the format of work programs submitted by MPOs, and monitoring an MPO's performance of activities and expenditure of funds under a UPWP. The department will design a uniform format for UPWPs and reports to be submitted by MPOs. This subsection describes how a UPWP is developed, the contents of a UPWP, how it is approved, and how the department will monitor work programs.

(1) Requirements. An MPO in cooperation with the department and operators of publicly owned transit systems must annually develop a unified planning work program that meets the requirements of 23 C.F.R. Part 420, Subpart A and 23 C.F.R. §450.314.

(2) Prospectus allowed. The metropolitan transportation planning process may include the development of a prospectus that establishes a multiyear framework within which the UPWP is accomplished.

(3) UPWP development. The department will develop a time line for development of the UPWP by the MPOs. Failure to adhere to the time line may result in a delay in the authorization to the MPOs to proceed in incurring costs.

(4) UPWP format. The department, in consultation with the MPOs, shall develop a standard UPWP format to be used by all MPOs. UPWPs submitted in a different format will not be approved.

(5) UPWP approval and revisions. The MPO policy board shall not delegate approval authority of, or subsequent revisions to, the UPWP.

(6) Annual performance and expenditure report. To allow the department to monitor work programs, the MPOs shall prepare and submit an annual performance and expenditure report of progress no later than December 31 of each year. A uniform format for the annual report will be established by the department, in consultation with the MPOs.

(b) Funding. Federal transportation planning funds are available to MPOs to develop the metropolitan transportation plans and transportation improvement programs required by this subchapter. Under 23 C.F.R. §420.111, the use of federal planning funds must be documented by the MPO in a work program acceptable to the FHWA setting out proposed work undertaken with federal planning funds and the estimated cost of this work. This subsection describes the requirements for a UPWP related to funding, limitations on the use of federal planning funds for planning work, when the travel costs of persons participating in the metropolitan planning process may be authorized and reimbursed, limitations on the expenditure of funds for planning work outlined in a UPWP, and how federal transportation planning funds will be distributed to MPOs.

(1) Requirements. The UPWP shall reflect transportation planning work tasks to be funded by federal, state, or local transportation, or transportation related (e.g. air quality), planning funds.

(2) Planning work eligibility. The use of federal metropolitan transportation planning funds shall be limited to transportation planning work conducted inside the Metropolitan Area Boundary (MAB). Any costs incurred for work outside this area will not be eligible for reimbursement.

(3) Authorization for travel outside the MAB. Travel outside the Metropolitan Area Boundary by MPO staff and other agencies participating in the MPO planning process shall be approved by the department if funded with federal transportation planning funds. Approval must be received prior to incurring any costs associated with the actual travel (e.g., registration fee). This provision will not apply if the travel was at the request of the department.

(4) Reimbursement of travel costs of elected officials. The cost of travel incurred by elected officials will not be eligible for reimbursement with federal transportation planning funds.

(5) Funding limitations. The use of federal transportation planning funds shall be limited to corridor/subarea level planning (major investment studies and environmental studies are considered corridor level planning). The use of such funds beyond environmental document preparation or for specific project level planning and engineering (efforts directly related to a specific project instead of a corridor) is not allowed.

(6) Department approval of costs. The MPO shall not incur any costs for work outlined in the UPWP or any subsequent amendments (i.e., adding new work tasks or changing the scope of existing work tasks) prior to receiving approval from the department. Any costs incurred prior to receiving department approval shall not be eligible for reimbursement from federal transportation planning funds.

(7) Expenditure limitations. Costs incurred by the MPO shall not exceed the total budgeted amount of the UPWP without prior approval of the MPO policy board and the department. Costs incurred on individual work tasks shall not exceed that task budget by 25% without prior approval of the MPO policy board and the department. If the costs exceed 25% of the task budget, the UPWP shall be revised, approved by the MPO policy board, and submitted to the department for approval.

(8) Distribution of funds. Federal transportation planning funds will be distributed to the MPOs based on a formula mutually agreed to by the department and FHWA/FTA.

§15.5. Metropolitan Planning Process.

(a) Responsibilities. The MPO, in cooperation with the department and operators of publicly owned transit services, is responsible for carrying out the metropolitan planning process. These entities are also responsible for cooperatively determining their mutual responsibilities in the conduct of the planning process. The process includes the cooperative development of a metropolitan transportation plan containing a long range forecast of proposed transportation projects and a transportation improvement program containing a list of projects which have been approved for development in the near term. The department will cooperatively participate in the development of the metropolitan transportation plan, metropolitan transportation improvement program, and any required management and monitoring systems, and will approve, along with the MPO, the metropolitan transportation improvement program. Under 23 U.S.C. §134 and 49 U.S.C. §5303, and implementing regulations contained in 23 C.F.R. Part 450, Subpart C, all transportation plans and programs developed by MPOs as part of the planning process must explicitly consider 16 factors, must provide for public involvement in developing transportation plans and transportation improvement programs, and must be documented in accordance with those provisions. This section describes how the metropolitan planning process will be carried out and how the public will be involved in the process.

(b) Elements. Elements required to be explicitly considered, analyzed as appropriate, and reflected in the planning process products are identified in 23 C.F.R. §450.316(a).

(c) Public involvement process. The metropolitan transportation planning process shall also include a public involvement process which, at a minimum, is in compliance with the requirements of 23 C.F.R. §450.316(b).

(d) Simplified procedures allowed. In attainment areas not designated as transportation management areas, simplified procedures for the development of plans and programs, if considered appropriate, may be proposed by the MPO in cooperation with the department and transit operators, in accordance with 23 C.F.R. §450.316(c). These procedures will be submitted by the department for approval by the FHWA and the FTA. At a minimum, all areas employing a simplified planning process must develop a metropolitan transportation plan and a transportation improvement program.

(e) Technical and other reports. The metropolitan transportation planning process shall include preparation of technical and other reports to assure documentation of the development, refinement, and update of the transportation plan. The reports shall be available for review by interested parties.

(f) Major investment studies. Major investment studies in accordance with 23 C.F.R. §450.318 will be conducted if there is an identified need for a major metropolitan transportation investment and federal funds may be involved.

(g) Management and monitoring systems. The metropolitan transportation planning process will also be conducted in compliance with 23 C.F.R. Parts 450 and 500, and 49 C.F.R. Parts 613 and 614 (relating to requirements for management and monitoring systems). Management systems shall be developed cooperatively by the department, MPOs, and transit operators for each metropolitan planning area. In transportation management areas, the congestion management system will be developed as part of the metropolitan transportation planning process.

(h) Certification.

(1) The department and the MPO shall annually certify to the FHWA and the FTA that the planning process is addressing the major transportation management issues facing the area and is being conducted in accordance with all applicable requirements of 23 C.F.R. §450.334.

(2) The FHWA and the FTA jointly will review and evaluate the transportation planning process for each TMA (as appropriate but no less than once every three years) to determine if the process meets the requirements of 23 C.F.R. Part 450, Subpart C and this subchapter.

(3) In transportation management areas that are nonattainment or maintenance areas for transportation related pollutants, the FHWA and the FTA will also review and evaluate the transportation planning process to assure that the MPO has an adequate process to ensure conformity of plans and programs in accordance with the EPA's conformity regulations contained in 40 C.F.R. Part 51.

(4) Upon the review and evaluation conducted under paragraphs (2) and (3) of this subsection, the FHWA and the FTA will jointly make the determinations and certifications provided for in 23 C.F.R. §450.334.

§15.6. Metropolitan Transportation Plan.

(a) Requirements. The metropolitan transportation planning process shall include the development of a metropolitan transportation plan, which is required under 23 C.F.R. §450.322 to address at least a 20 year planning horizon and include both long range and short range strategies or actions that lead to the development

of an integrated intermodal transportation system that facilitates the efficient movement of people and goods. The metropolitan transportation plan is cooperatively developed by the MPO, the department, and operators of publicly owned transit services. The department is also responsible for reviewing plans, and submitting new and revised plans to FHWA and FTA for their information. This section describes how a metropolitan transportation plan will be developed, how a plan is approved, and the involvement of federal transportation planning agencies in plan development.

(b) Development. Development of a metropolitan transportation plan shall be conducted in accordance with 23 C.F.R. §450.322 and shall include all required elements of that section. Each project in the metropolitan transportation plan shall be assigned a unique project number.

(c) Approval. Metropolitan transportation plans must be approved by the MPO. Prior to any approval, there must be adequate opportunity for public involvement in the development of the plan, in accordance with 23 C.F.R. §450.322(c) and §15.5(c) of this title (relating to the metropolitan planning process).

(d) Submission of new and revised plans. Although metropolitan transportation plans do not need to be approved by the FHWA or the FTA, copies of any new/revised plans must be provided to the department for further handling with each federal agency.

§15.7. Transportation Improvement Program (TIP).

(a) Requirements. Title 23, Code of Federal Regulations, §450.324, requires the metropolitan transportation planning process to include the development of a transportation improvement program for the metropolitan planning area, containing a list of projects which have been approved for development in the near term. The transportation improvement program is required to be developed in cooperation with the department and public transit operators, and must be approved by the MPO and the department. After approval and any needed conformity findings, a TIP is included without modification in the statewide transportation improvement program. After inclusion, the MPO and the department will select projects for implementation in accordance with 23 C.F.R. §450.332. This section describes how a transportation improvement program and its financial plan will be developed, projects required to be included in a TIP, consistency and conformity requirements, the format of a TIP, the TIP approval process, how a TIP is updated and modified, public involvement in TIP development, and project selection procedures. This section also describes the development of rural TIPs by the department. Development of rural TIPs is part of the STIP development process described in §15.8 of this title (relating to the Statewide Transportation Improvement Program).

(b) Development.

(1) Metropolitan TIP. The MPO designated for a metropolitan planning area, in cooperation with the department and publicly owned transit operators, shall develop a transportation improvement program and financial plan in accordance with the requirements of 23 C.F.R. §450.324. The department shall provide an MPO estimates of available federal and state funds to be used in developing the financial plan. The TIP shall cover the metropolitan planning area and shall be updated and approved at least every two years by the MPO and the department. The TIP shall include all projects, except those described in subsection (d) of this section, to be funded under Titles 23 and 49 of the U.S. Code, including those projects required to be included by 23 C.F.R. §450.324(f).

(2) Rural TIP. The department shall develop transportation improvement programs for all areas of the state outside of metropolitan planning areas. These rural TIPs will be developed in accordance with the requirements of 23 C.F.R. §450.216 and §15.8 of this title, will exclude the projects required to be excluded by those sections, and will become part of the STIP after approval by the executive director.

(c) Grouping of projects. Projects that are not considered by the department and the MPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, or work type (e.g., rehabilitation, seal coating). In nonattainment and maintenance areas, classification must be consistent with the exempt project classifications contained in the EPA conformity regulations.

(d) Projects excluded. The following projects may be excluded from the metropolitan TIP by agreement between the department and the MPO:

(1) safety projects funded under 23 U.S.C. §402 (highway safety programs), and emergency relief projects, except those involving substantial functional, location, and capacity changes;

(2) planning and research activities, except those activities funded with National Highway System, Surface Transportation Program, or Minimum Allocation funds other than those used for major investment studies; and

(3) projects under 23 U.S.C. §104(b)(1), 23 U.S.C. §104(b)(5)(A)-(B), and 23 U.S.C. §144 that are for resurfacing, restoration, rehabilitation, reconstruction, or highway safety improvement, and which will not alter the functional traffic capacity or capability of the facility being improved.

(e) Consistency and conformity.

(1) Metropolitan transportation plan. A project in the metropolitan TIP must be consistent with the metropolitan transportation plan. The unique project identification number for each project that was included in the metropolitan transportation plan will be the same number and will be referenced for each project in the TIP.

(2) Statewide transportation plan. A project in the rural TIP must be consistent with the statewide transportation plan developed under 23 C.F.R. §450.214.

(3) Clean Air Act Amendments and State Implementation Plan. In nonattainment and maintenance areas, a project selected for the TIP must conform with the Clean Air Act Amendments and state implementation plan.

(4) Conformity requirements. The MPO in each urbanized nonattainment and maintenance area will be responsible for preparation of the conformity finding requirements of the CAAA and the EPA conformity regulations. The department will be responsible for preparation of the conformity finding requirements in nonattainment and maintenance areas outside of metropolitan planning areas.

(f) Format. The department, in consultation with the MPOs, will develop a uniform TIP format to produce a uniform STIP. The department in consultation with the MPOs may make modifications to the format. The MPOs shall submit their TIP to the department in this format.

(g) Financial plan. A financial plan that demonstrates consistency with funding reasonably expected to be available during the relevant period shall be developed for metropolitan TIPs by the MPO in cooperation with the department and transit operators. A financial plan does not need to include a project funded under a federal discretionary program.

(h) TIP approval. Under 23 U.S.C. §134 and 49 U.S.C. §5304, the MPO and the executive director shall approve the metropolitan TIP and any amendments found to be in accordance with this section. The executive director will approve metropolitan and rural TIPs if he or she finds the TIP has met all the requirements of this section, §15.8 of this title, 23 U.S.C. §134 and §135, 49 U.S.C. §5304, and that the TIP:

(1) develops, operates, and maintains efficient and effective transportation systems and services;

(2) improves public safety and security on transportation systems;

(3) facilitates economic and social prosperity through the efficient movement of people and goods;

(4) protects, where feasible, and enhances the environment, where practicable, in transportation activities;

(5) improves and promotes the connectivity of transportation services and systems; and

(6) optimizes transportation funding to meet the mobility needs of the state.

(i) Management. As a management tool for monitoring progress in implementation of the metropolitan transportation plan, the metropolitan TIP shall identify the criteria and process for prioritizing implementation of transportation plan elements for inclusion in the TIP and any changes in priorities from previous TIPs in accordance with the factors specified in 23 C.F.R. §450.324(n).

(j) Updating. The frequency and cycle for updating the TIP must be compatible with the STIP development process established by the department and described in §15.8(b) of this title.

(k) Modification.

(1) Amendments. The TIP may be amended consistent with the procedures established in this section for its development and approval with the following stipulations.

(A) An amendment to the TIP is required for projects using federal funds or, in nonattainment areas, state funds, if there is a change:

(i) adding or deleting a project in the TIP;

(ii) in the project scope of work;

(iii) in the phase of work (such as the addition of preliminary engineering, construction, or right-of-way); and

(iv) in the TIP year if the MPO's project selection procedure does not provide for selecting projects from the second or third year.

(B) An amendment to the TIP is not required if there is a change:

(i) in funding sources unless the change forces the addition or deletion of other federally funded projects or, in nonattainment areas, state funded projects;

(ii) in the cost estimate which is not caused by a change in the project work scope or limits; or

(iii) in the letting date.

(2) Conformity requirements. In nonattainment and maintenance areas for transportation related pollutants, a conformity determination must be made on any new or amended TIPs (unless the amendment consists entirely of projects exempt under subsection (c) of this section) in accordance with CAAA requirements and the EPA conformity regulations.

(l) TIP relationship to STIP.

(1) Metropolitan TIP. After approval by the MPO and the executive director, the TIP will be included without modification in the STIP except that in nonattainment and maintenance areas, the FHWA and the FTA must make a conformity finding before inclusion. The department will notify the MPO and appropriate federal agencies when a TIP has been included in the STIP.

(2) Rural TIP. After approval by the executive director, rural TIPs will be included in the STIP, except in nonattainment and maintenance areas outside metropolitan planning areas, where federal findings of conformity must be made prior to placing projects in the STIP.

(m) TIP public involvement.

(1) Metropolitan public involvement process. Each MPO will develop a public involvement process covering the development of a metropolitan TIP in accordance with 23 C.F.R. §450.324(c) and §15.5(c) of this title (relating to the metropolitan planning process). The MPOs shall also use adopted public involvement procedures in amending the TIP.

(2) Rural public involvement process.

(A) Initial adoption. Each department district will develop and implement a public involvement process covering the development of a rural TIP that, at a minimum, consists of the following:

(i) publication, in a newspaper with general circulation in each county within the district, of a notice informing the public of the availability of the proposed rural TIP and of a ten day public comment period;

(ii) a request, in the published notice, for public comments concerning the proposed rural TIP, to be submitted in writing to the district; and

(iii) notification, in the published notice, that a public hearing will be held in order to receive comments on the initial adoption, along with a public comment period of at least ten days subsequent to the hearing. The notice of public hearing will be published a minimum of ten days prior to the hearing.

(B) Revisions involving mobility projects. Each district will, at a minimum, publish, in a local newspaper of general circulation, a notice informing the public of the availability of these revisions and of a ten day public comment period. The notice will also request public comments to be submitted, in writing, to the

district, and will also notify the public that a public hearing will be conducted to receive comments on the proposed revision.

(n) Project selection procedures. Under 23 C.F.R. §450.332, project selection from an approved metropolitan transportation improvement program varies depending on whether a project selected for implementation is located in a transportation management area and what type of federal funding is involved. The purpose of this subsection is to prescribe project selection procedures and specify which entity may select a project for implementation.

(1) General. Project selection procedures must be developed for each metropolitan area and for state projects that lie outside of metropolitan planning areas. The department will develop and reevaluate annual project selection procedures for state projects which lie outside of metropolitan planning areas in accordance with §15.8(g) of this title.

(A) Project agreement. The first year of both the TIP and the STIP constitute an agreed to list of projects for project selection purposes. Project selection may be revised if the apportioned funds, including the highway obligation ceiling and transit appropriations, are significantly less than the authorized funds. In such cases, if requested by the MPO, the department, or the transit operator, a revised agreed to list of projects for project selection purposes may be developed.

(B) Eligibility. Only projects included in the federally approved STIP will be eligible for funding with Title 23, U.S. Code, or Federal Transit Act (49 U.S.C. §5301 et seq.) funds.

(2) Project selection in non-transportation management areas. In an area not designated as a TMA, the department or the transit operator, in cooperation with the MPO, will select projects to be implemented using federal funds from the approved metropolitan TIP. Federal lands highways program projects shall be selected in accordance with 23 U.S.C. §204.

(3) Project selection in TMAs.

(A) Selection by MPO. In an area designated as a TMA, all Title 23, U.S. Code and Federal Transit Act funded projects, except projects on the National Highway System and projects funded under the bridge, interstate maintenance, safety, enhancement, and Federal lands highways programs, shall be selected by the MPO in consultation with the department and transit operators from the approved metropolitan TIP and in accordance with the priorities of the approved metropolitan TIP.

(B) Selection by the department. In an area designated as a TMA, the department, in cooperation with the MPO, will select projects on the National Highway System and projects funded under the bridge, interstate maintenance, safety, and enhancement programs from the approved metropolitan TIP. Federal lands highways program projects shall be selected in accordance with 23 U.S.C. §204.

§15.8. Statewide Transportation Improvement Program (STIP).

(a) Purpose. Title 23, U.S. Code, §135, as implemented by 23 C.F.R. Part 450, Subpart B, requires each state to carry out a continuing, comprehensive, and intermodal statewide transportation planning process, including the development of a statewide transportation plan and transportation improvement program, that facilitates the efficient, economic movement of people and goods in all areas of the state, including those areas subject to the metropolitan planning requirements of 23 U.S.C. §134 and 23 C.F.R. Part 450, Subpart C. This section describes the STIP development process, funding for projects included in the STIP, public involvement in STIP development, the STIP approval process, the STIP revision process, and project selection procedures.

(b) STIP development. The department will develop a STIP for all areas of the state in cooperation with the MPOs designated for metropolitan areas.

(1) Projects included.

(A) A highway or transit project funded under Title 23, U.S. Code or the Federal Transit Act (49 U.S.C. §5301 et seq.) will be included in a federally approved STIP. A project in the STIP will be consistent with the statewide long-range transportation plan and metropolitan TIPs, and the program will reflect expected funding and priorities for programming.

(B) Projects that are not considered by the department and MPO to be of appropriate scale for individual identification in a given program year (e.g., rehabilitation, seal coating) may be grouped by function, geographic area, or work type.

(C) In a nonattainment area, only those projects which have been determined to conform with the requirements of the CAAA and which comply with the state implementation plan may be included in the STIP.

(D) Regionally significant projects to be funded with non-federal funds will be included in the STIP for planning, coordination, and public disclosure purposes.

(2) STIP funding. The federal funding level for each year of the STIP is the annual authorization as outlined in 23 U.S.C. §101 et seq. and funds appropriated under 49 U.S.C. §5301 et seq., in addition to the appropriate state and local match.

(c) STIP financial plan. The STIP will reflect the priorities for programming and expenditure of funds and will:

(1) include a financial plan that demonstrates how the transportation improvements can be funded and reasonably implemented;

(2) be consistent with funding reasonably expected to be available during the relevant period; and

(3) be financially constrained by year.

(d) STIP public involvement process. Under 23 U.S.C. §135, the governor is responsible for providing for public involvement in the STIP development process. The governor has delegated this responsibility to the commission, which in turn has delegated the responsibility to the executive director.

(1) Initial adoption. In developing the STIP, the department will hold at least one statewide public hearing regarding the adoption of the proposed STIP with an available comment period of at least ten days subsequent to the hearing.

(A) The department will publish a notice of the hearing in the Texas Register a minimum of ten days prior to it being held.

(B) A copy of the proposed STIP will be available for review, at the time the notice of hearing is published, at each of the

department's district offices and at the department's Transportation Planning and Programming Division offices in Austin.

(C) The approved STIP will also be made available at each of the department's district offices and at the Transportation Planning and Programming Division offices in Austin.

(2) STIP amendments.

(A) General. The executive director will approve amendments according to a published schedule developed in accordance with subsection (f) of this section, which the department will make available at the department's district offices and to the MPOs on an annual basis.

(B) Amendments to the STIP involving a major revision.

(i) The department will publish in the Texas Register notification of the availability of copies of proposed STIP amendments involving a major revision. Copies of these amendments will be made available at each of the department's district offices and at the Transportation Planning and Programming Division offices in Austin.

(ii) The published notice will initiate a ten day public comment period and will inform the public where to send any written comments.

(iii) The department will accept written comments on the proposed STIP amendments during the ten day public comment period.

(e) STIP approval.

(1) The commission will approve the STIP if it finds the STIP has met all the requirements of this section and that the STIP:

(A) develops, operates, and maintains efficient and effective transportation systems and services;

(B) improves public safety and security on transportation systems;

(C) facilitates economic and social prosperity through the efficient movement of people and goods;

(D) protects, when feasible, and enhances, when practicable, the environment in transportation activities;

(E) improves and promotes the connectivity of transportation services and systems; and

(F) optimizes transportation funding to meet the mobile needs of the state.

(2) The executive director may approve a partial STIP if difficulties are encountered in cooperatively developing the STIP portion for a particular metropolitan or rural area.

(f) STIP revisions.

(1) Schedule of revisions. The department and the MPOs will be required to adhere to a quarterly STIP revision cycle, except as provided in paragraph (2) of this subsection. Project information and MPO approval documentation for the quarterly revisions must be received by the department's Transportation Planning and Programming Division by the close of business on the first working day of the revision month.

(2) Exceptions. The executive director may approve an exception to this requirement if:

(A) additional funding becomes available; or

(B) the revision involves a project which is expected to have a significant effect on capacity, connectivity, or public safety and security on transportation systems.

(g) Project selection procedures. Under 23 C.F.R. §450.222, project selection from an approved STIP varies depending on whether a project selected for implementation is located in a metropolitan planning area and on what type of federal funding is involved. The purpose of this subsection is to prescribe project selection procedures and specify which entity may select a project for implementation.

(1) General. Project selection procedures must be developed for each metropolitan area and for state projects that lie outside of metropolitan planning areas. The department will develop and reevaluate annual project selection procedures for state projects which lie outside of metropolitan planning areas.

(A) Project agreement. The first year of both the TIP and the STIP constitute an agreed to list of projects for project selection purposes. Project selection may be revised if the apportioned funds, including the highway obligation ceiling and transit appropriations, are significantly less than the authorized funds. In such cases, if requested by the MPO, the department or the transit operator, a revised agreed-to list of projects for project selection purposes may be developed.

(B) Eligibility. Except as provided in 23 C.F.R. §450.322(a), only those projects included in the federally approved STIP will be eligible for funding with Title 23, U.S.C., or Federal Transit Act (49 U.S.C. §5301 et seq.) funds.

(2) Project selection in metropolitan planning areas. In metropolitan planning areas, transportation projects shall be selected in accordance with the project selection procedures established in §15.7(n) of this title (relating to Transportation Improvement Programs).

(3) Project selection outside metropolitan planning areas. Outside metropolitan planning areas, transportation projects undertaken on the National Highway System with Title 23 funds and under the bridge and interstate maintenance programs shall be selected by the department in consultation with affected local officials. Federal lands highways projects shall be selected in accordance with 23 U.S.C. §204. Other transportation projects undertaken with funds administered by the FHWA shall be selected by the department in cooperation with the affected local officials, and projects undertaken with Federal Transit Act funds shall be selected by the department in cooperation with the affected local officials and transit operators.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bob Jackson
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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Chapter 22. Use of State Property

Subchapter C. Use of State Intellectual Property

43 TAC §§22.20-22.22

The Texas Department of Transportation proposes new §§22.20-22.22, concerning use of state intellectual property.

Texas Civil Statutes, Article 6673a-4 authorizes the department to apply for, register, secure, hold, license, and protect copyrights, trademarks, patents, or other evidence of protection or exclusivity, and to receive license fees, royalties, or other consideration for the use of its intellectual property. Government Code, §2054.115, requires the department to obtain appropriate compensation for the development of software.

New §22.20 establishes that the department may receive license fees, royalties, or other consideration for the use of its intellectual property, and describes the purpose of the subchapter which is to prescribe the policies and procedures governing the protection and use of department intellectual property. New §22.21 provides words and terms used in this subchapter.

New §22.22 prescribes the contents of the request for license, and approval of a license based on consistency with law, benefit to the department, and non-conflict with department plans or activities. The section also requires the department to prepare a written statement describing the reason for disapproval, and develop a fee schedule that considers commercial rates for comparable property, original development cost, intended use of the property, private or public status of the requestor, and primary beneficiary of the license. The department may waive or reduce fees if the waiver or reduction will further the goals and missions of the department and result in a net benefit to the state. The section requires the execution of a written agreement prior to receiving the copies or the license containing provisions such as license term and geographical area, rights granted, description of products utilizing the trademark, fees or royalties, inspection of licensee's books and records, policing of trademark or copyright infringement, prohibited uses, and indemnification of the department. The section also establishes an appeal procedure to the intellectual property committee if the request is not approved.

Frank J. Smith, Director, Budget and Finance Division, has determined that for each year of the first five-year period the new sections are in effect there will be an estimated increase in revenue for state government as a result of enforcing or administering the new sections. The estimated increase cannot be determined because obtaining a license for intellectual property is a voluntary decision and would depend on the number of licenses issued and the type of intellectual property licensed. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the sections.

There is an anticipated economic cost to persons who are required to comply with the rules as proposed. However, these costs cannot be quantified as it will depend on the number of persons who are issued licenses and the type of property acquired.

Robert W. Jackson, Deputy General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

Mr. Jackson also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be to protect and maximize the department's investment in developing intellectual property, and to encourage the availability and use of the department's intellectual property. There will be no effect on small businesses.

Written comments on the proposed new sections may be submitted to Robert W. Jackson, Deputy General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be at 5:00 p.m. on September 10, 1997.

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Texas Civil Statutes, Article 6673a-4, which authorizes the department to adopt rules concerning the use of intellectual property.

No statutes, articles, or codes are affected by the proposed new sections.

§22.20. Purpose.

Texas Civil Statutes, Article 6673a-4 and Government Code, §2054.115 authorize the department to apply for, register, secure, hold, license, and protect copyrights, trademarks, patents, or other evidence of protection or exclusivity. The department may receive license fees, royalties, or other consideration for the use of its intellectual property. The sections under this subchapter prescribe the policies and procedures governing the protection of department intellectual property, and the use of department intellectual property by third parties.

§22.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Department - The Texas Department of Transportation.

Executive director - The chief administrative officer of the department.

Intellectual property - Ideas, publications, and other original innovations fixed in a tangible medium, including, but not limited to:

(A) literary works;

(B) logos;

(C) service marks;

(D) studies;

(E) maps and planning documents;

(F) engineering, architectural, and graphic designs;

(G) manuals;

(H) automated systems software;

(I) audiovisual works;

(J) sound recordings;

(K) travel literature, including but not limited to pamphlets, bulletins, books, maps, periodicals, and electronic information published or produced under Texas Civil Statutes, Article 6144e; and

(L) mechanical devices.

Intellectual Property Committee - Individuals appointed by the executive director to evaluate and make recommendations to the executive director or his or her designee concerning issues relating to ownership and protection of intellectual property.

Senior management team member - The department administrative officer responsible for a department division or special office.

§22.22. Licensure.

(a) Policy. The department may authorize the licensure of department owned intellectual property. This section prescribes the procedure for obtaining a license.

(b) Request. A person may submit a written request for a license to the department's General Services Division. A request must include, but is not limited to:

(1) name of the requestor and if an organization, the name of the organization;

(2) number of copies or licenses requested;

(3) name or description of the intellectual property requested;

(4) the purpose for which the intellectual property will be used;

(5) the plan of distribution and marketing, if applicable;

(6) the term of the license, if applicable; and

(7) a request for waiver of fees, if applicable.

(c) Approval. The senior management team member with jurisdiction over the intellectual property will approve the request if he or she determines that the distribution of copies or the granting of a license:

(1) is consistent with Texas Civil Statutes, Article 6673a-4, and Government Code, §2054.115;

(2) will benefit the department; and

(3) does not conflict with department plans or activities.

(d) Disapproval. If the department denies the request, it will provide the requestor with a written statement describing the reason for denial.

(e) Fees. The department will determine the monetary value of department intellectual property and will set license fees.

(1) Fee schedule. In developing a fee schedule, the department will consider the:

(A) commercial rates for comparable property;

(B) original development cost;

(C) intended use of the property;

(D) private or public status of the requestor; and

(E) primary beneficiary of the license.

(2) Waiver of fee. The department may waive or reduce the amount of fees, royalties, or other monetary or nonmonetary value to be assessed if the executive director or his or her designee determines that such waiver or reduction will further the goals and missions of the department and result in a net benefit to the state.

(f) Agreement. If the department approves the copies or license, the requestor must execute a written agreement with the department prior to receiving the copies or the license. The agreement will contain terms and conditions the department deems necessary to protect the department, including, but not limited to:

(1) license term and geographical area;

(2) rights granted, including patent-rights;

(3) description of products utilizing the trademark;

(4) fees or royalties;

(5) inspection of licensee's books and records;

(6) policing of trademark or copyright infringement;

(7) prohibited uses; and

(8) indemnification of the department.

(g) Appeal. A requestor may appeal department denial of the license request to the Intellectual Property Committee by submitting a written request for appeal. The decision of the Intellectual Property Committee will be final.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bob Jackson
Deputy General Counsel
Texas Department of Transportation
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Chapter 23. Travel Information

The Texas Department of Transportation proposes amendments to §23.1 and §23.2 concerning purpose and definitions, and new §23.8 concerning distribution of subscriber and purchaser information.

Texas Civil Statutes, Article 6144e, recognizes the spirit of House Concurrent Resolution Number 26, passed by the 64th Legislature, which named Texas Highways the official travel magazine of Texas. House Bill 2220, 75th Legislature, 1997, amended Texas Civil Statutes, Article 6144e to require that the department adopt rules establishing policies relating to the release of subscriber or purchaser information, the use by the department of Texas Highways magazine subscriber and purchaser information, and the sale of a mailing list containing the names and addresses of subscribers or purchasers.

The amendments to §23.1 provide changes relating to the reorganization of the Travel and Information Division and reflect the recodification of transportation statutes by specifying the duties

of the travel and information division, including litter reduction, highway beautification, and providing information on road conditions and Texas travel opportunities. The amendments to §23.2 provide definitions for terms and words used in §23.1 and new §23.28.

New §23.28 provides that the: information will be used for reader surveys, demographic profiles, marketing subscription or product offers, and to offset costs for Texas Highways magazine; the department may sell the mailing list for one-time use in accordance with industry practice and to ensure that only updated lists are used; and mailing list rates will be published on a continuing basis and based on the department's determination of fair-market value in accordance with industry practice. It also allows a subscriber or purchaser to ask that his or her name and address be removed from mailing list sales by letter or telephone call to Texas Highways magazine in order to prevent that subscriber or purchaser from receiving unwanted, unsolicited mailings and provides that Texas Highways magazine will include instructions concerning how to request removal of names and addresses from mailing list sales in each issue. The section provides the information may be disclosed to a governmental agency if the agency certifies in writing that the information is necessary for the performance of the agency.

Frank J. Smith, Director, Budget and Finance Division, has determined that for each year of the first five-year period the new section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The estimated additional cost for state government is $18,750 in fiscal years 1998-2002. The estimated increase in revenue for state government is $93,750 in fiscal years 1998-2002. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the section.

Doris Howdeshell, Director, Travel and Information Division, has certified that for each year of the first five years the sections are in affect there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section. There is an anticipated economic cost to persons who are required to comply with the new section as proposed, but that cost cannot be estimated because purchase of the mailing list is voluntary and the total cost depends upon how often the list is purchased.

Ms. Howdeshell also has determined that for each year of the first five years the amendments and new section are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with House Bill 2220 and an offset of the cost to publish the Texas Highways magazine. There will be no effect on small businesses.

Written comments on the proposed amendments and new section may be submitted to Doris Howdeshell, Director, Travel and Information Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be at 5:00 p.m. on September 12, 1997.

Subchapter A. General Provisions

43 TAC §23.1, §23.2

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Texas Civil Statutes, Article 6144e, which provides the Texas Department of Transportation with the authority to publish Texas Highways magazine.

No statutes, articles, or codes are affected by the proposed amendments.

§23.1. Purpose.

This chapter prescribes the policies and procedures for operation of the **Travel and Information Division** [division of travel and information] of the Texas Department of Transportation. The division directly serves the Texas Transportation Commission and the department's administration by administering public information and travel and tourism programs. Public information activities consist of preparing and disseminating, in accordance with **Transportation Code, §201.801** [Texas Civil Statutes, Articles 6555a], information of public interest concerning **road conditions, litter reduction, highway beautification, and information on Texas' travel opportunities** [department policies, programs, and procedures, including any aspect of transportation systems construction, operation, or maintenance]. The travel and tourism functions, as authorized by Texas Civil Statutes, Article 6144e, include operation of the state's network of Texas travel information centers, producing and disseminating the state's travel and tourism literature, and in accordance with House Concurrent Resolution 26, 64th Legislature, 1975, publishing Texas Highways magazine.

§23.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Director - The director of the **Travel and Information Division** [division of travel and information].

Division - The **Travel and Information Division** [division of travel and information] of the Texas Department of Transportation.

Purchaser - A person who purchases a Texas Highways magazine product.

Purchaser and subscriber mailing list - A list that contains the names and addresses of purchasers and subscribers.

Subscriber - A person who pays a fee to receive Texas Highways magazine by mail.

Travel Information Center - A recognized location where travel literature and travel counseling are provided by the department's trained professional travel counselors, strategically located in buildings designated with signs, some with adjoining rest areas, on key highways entering the state, at the historical site of Judge Roy Bean's court at Langtry, and in the Capitol Complex Visitor Center in Austin.

Travel and tourism - Scenic, cultural, artistic and historical points of interest, public and private leisure and recreation attractions, and parks located within the official boundaries of the state of Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter C. Texas Highways Magazine

43 TAC §23.28

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Texas Civil Statutes, Article 6144e, which provides the Texas Department of Transportation with the authority to publish Texas Highways magazine.

No statutes, articles, or codes are affected by the proposed new section.

§23.28. Distribution of Subscriber and Purchaser Information.

(a) Use of information. The department will utilize the subscriber and purchaser information to:

(1) survey readers for reader satisfaction;

(2) obtain demographic profiles that will assist the magazine staff in choosing appropriate subject matter;

(3) market subscription or product offers; and

(4) offset costs for Texas Highways magazine.

(b) Sale of mailing lists to the general public.

(1) The department may sell the mailing list containing names and addresses of subscribers or purchasers either directly or through a contracted list broker for one-time use.

(2) Mailing list rates will be published on a continuing basis in the Standard Rate and Data Service, Direct Marketing List Source and based on the department's determination of fair-market value.

(3) A subscriber or purchaser may ask that his or her name and address be removed from the mailing list sales by letter or telephone call to Texas Highways magazine. Texas Highways magazine will include instructions concerning how to request removal of names and addresses from mailing lists sales in each issue.

(c) Release of mailing lists to governmental agencies. Subscriber or purchaser information may be disclosed to an agency of this state or the United States if the agency certifies in writing that the information is necessary for the performance of the agency's duties.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chapter 25. Traffic Operations

Subchapter A. General

43 TAC §25.7

The Texas Department of Transportation proposes an amendment to §25.7, concerning the removal and storage of personal property from the state highway system.

Transportation Code, §§472.011-472.014, authorizes the Texas Department of Transportation to remove and dispose of spilled cargo or other personal property on state rights of way or a portion of the roadway of the state highway system.

Senate Bill 370, §1.43, 75th Legislature, 1997, expanded the existing authority of the department to move personal property from the state highway system to include vehicles, as defined by §502.001 of the Transportation Code. Section 25.7 is amended to include vehicles as items the department could remove from the state highway system.

Frank J. Smith, Director, Budget and Finance Division, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the amendments. There is a minimal anticipated cost to persons who are required to comply with the amendments as proposed. These costs cannot be quantified as it depends on the number of vehicles required to be removed. Vehicles will only be moved as necessary to clear roadways or shoulders of the state highway system.

David T. Newbern, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

Mr. Newbern also has determined that for each year of the first five years the proposed amendments are in effect the public benefits anticipated as a result of enforcing the amendments will be to ensure that roadways on the state highway system are operated at maximum efficiency by a more rapid clearing of damaged or disabled vehicles that may be obstructing the flow of people and goods. There will be no effect on small businesses.

Written comments on the proposed amendments may be submitted to David T. Newbern, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 E. 11th St., Austin, Texas 78701-2483. The deadline for receipt of written comments is 5:00 p.m. September 12, 1997.

The amendments are proposed under Transportation Code, §201.101, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation and, more specifically, Transportation Code, §§472.011-472.014, which authorizes the Texas Department of Transportation to remove obstructions from state highways and rights of way.

No other statutes, articles, or codes are affected by these amendments.

§25.7. Removal and Storage of [Spilled Cargo and] Personal Property.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(2) (No change.)

(3) Hazardous material - Material as defined by the Hazardous Material Transportation Act (49 U.S.C. **§5102** [§1801]).

(4) (No change.)

(5) **Personal** [Spilled cargo or personal] property - **Property of any kind or character that** [Material that separates from the vehicle in which it is being transported and which] comes to rest within state right of way or a portion of the roadway of the state highway system**, including:**

(A) a vehicle;

(B) spilled cargo;

(C) a hazardous material; and

(D) a hazardous substance.

(6) Vehicle - A device in or by which a person or property is or may be transported or drawn on a public highway, other than a device used exclusively on stationary rails or tracks.

(c) General conditions warranting removal of [spilled cargo or] personal property.

(1) The department may, without the consent of the owner or carrier, remove [spilled cargo or other] personal property from the state's right of way if the department considers this cargo or property to be blocking the roadway or endangering public safety.

(2) For each occurrence, the department will determine whether the removal of the **personal** [cargo or] property is warranted based on the following considerations:

(A)-(F) (No change.)

(3) If the department determines that removal is necessary, it will remove the [cargo or] property with as much care as is practical under the existing conditions.

(4) The department will remove [cargo or] property that it believes is a hazardous material or a hazardous substance in compliance with Government Code, §411.018, and the Texas Hazardous Substances Spill Prevention and Control Act, Water Code, Chapter 26, Subchapter G.

(5) The department and its employees do not assume responsibility for damage to the [cargo or] property resulting from removal.

(d) Notification of property owner.

(1) The department, through its local districts, will attempt to contact the owner or carrier of the [cargo or] property through information obtained from the property or through inquiries from the owner or carrier.

(2) (No change.)

(e) Storage of [Cargo and] Property.

(1) Property other than vehicles.

(A) [(1)] Removal of [cargo or] property may include transportation to and/or storage of the property at a site other than the spill location.

(B) [(2)] The owner or carrier is responsible for the security of the [cargo or] property and the integrity of any perishable goods at all times.

(C) [(3)] The owner or carrier will claim and take possession of the [cargo or] property as soon as possible after its relocation from the spill site. The department may dispose of the [cargo or] property if the owner, after notification, fails to take possession [of the cargo] within 10 days.

(D) [(4)] The owner or carrier is responsible for the costs of removal and disposing of the [cargo or] property. The department will bill the responsible party for all costs and the responsible party shall remit the costs to the department within 30 days of the date of billing. If the responsible party fails to remit all costs, the department may refer the matter to the Office of the Attorney General for collection.

(2) Removal of vehicles.

(A) The department will move a vehicle from the roadway or shoulder as necessary to prevent a disabled or damaged vehicle from blocking the roadway or endangering public safety. In some circumstances, this may require the department to move, or arrange to move, a vehicle to a location away from the original site, such as a vehicle storage facility.

(B) The vehicle owner will be responsible for all costs associated with the removal and storage of a vehicle.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710061
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: September 13, 1997
For further information, please call: (512) 463-8630

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 22. EXAMINING BOARDS

Part XXII. Texas Sate Board of Public Accountancy

Chapter 501. Professional Conduct

Other Responsibilities and Practices

22 TAC §501.47

The Texas State Board of Professional Accountancy has withdrawn from consideration for permanent adoption the proposed amendment §501.47, which appeared in the June 20, 1997, issue of the *Texas Register* (22 TexReg 5883).

Issued in Austin, Texas, on August 1, 1997.

TRD–9710012
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: July 24, 1997
For further information, please call: (512) 505–5566

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 127. Registry for Providers of Health-Related Services

25 TAC §127.2, §127.4

The Texas Department of Health has withdrawn from consideration for permanent adoption the proposed amendments to §127.2 and §127.4, which appeared in the February 4,1997, issue of the *Texas Register* (22 TexReg 1304).

Issued in Austin, Texas, on August 4, 1997.

TRD-9710069
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: August 4, 1997
For further information, please call: (512) 458–7236

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 105. Rules of Practice in Contested Cases

7 TAC §105.22, §105.23

The State Securities Board adopts new rules §105.22 and §105.23, concerning contested cases. Section 105.23 is adopted with changes to the proposed text as published in the April 1, 1997, issue of the *Texas Register* (22 TexReg 3184). The word "individually" was added in §105.23(b) to clarify that an individual Board member may communicate ex parte with members of the Agency who did not participate in the contested case hearing. Section 105.22 is adopted without changes and will not be republished.

The rules allow the Board to act in place of the Securities Commissioner in contested case decisions when the Board deems it appropriate to do so. Such intervention is entirely within the discretion of the Board, and the Board cannot be compelled to do so. The rules also extend to Board members existing Agency practice regarding ex parte communications.

The rules provide a mechanism for the Board to intervene in contested case decisions at the Board's option and detail ex parte communication policies to be followed by the Securities Commissioner, Board, or other decision maker during contested case proceedings.

One comment letter was received regarding adoption of the new rules. That letter, from Kuperman, Orr, Mouer & Albers, supported adoption of the new rules. The Board agreed and adopted the rules substantially as published.

The new rules are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

§105.23. Ex Parte Communications.

(a) Upon the issuance of a Notice of Hearing in a contested case and continuing until a Motion for Rehearing is ruled on or the time for ruling on such a Motion has expired, the Securities Commissioner (or other person assigned to render a decision in a contested case) and members of the Board may not communicate directly or indirectly with any party or a representative of a party in a contested case in connection with any issue of fact or law in the proceeding except on notice and opportunity for all parties to participate.

(b) The Securities Commissioner (or other person assigned to render a decision in a contested case) and members of the Board, individually, may communicate ex parte with employees of the Agency who did not participate in any hearing in the case in order to utilize special skills or knowledge of the Agency's staff in evaluating the record in the case. Prohibited ex parte communications shall not include any written communication if the communicator contemporaneously serves copies of the communication on all parties to the proceeding.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709983
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 21, 1997
Proposal publication date: April 1, 1997
For further information, please call: (512) 305–8300

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Chapter 107. Terminology

Subchapter

7 TAC §107.2

The State Securities Board adopts an amendment to §107.2, concerning definitions, with changes to the proposed text as published in the April 18, 1997, issue of the *Texas Register* (22 TexReg 3567). The word "investment" was inserted before "adviser," in the definition of "solicitor," to clarify that the definition applies to a person or entity functioning as a solicitor for an investment adviser.

The rule formalizes an existing agency policy requiring registration by a person or entity receiving compensation for soliciting clients for an investment adviser.

The rule identifies persons and entities, compensated for soliciting clients on behalf of an investment adviser, required to be registered as an agent of an investment adviser.

One comment letter was received on the proposal. The letter, from Kuperman, Orr, Mouer & Albers ("KOMA"), opposed adoption of the rule and commented: that defining the term "solicitor" serves no purpose; that requiring registration of a person who solicits clients for an investment adviser adds a "new" layer of unnecessary regulatory burden and cost; and that the Securities and Exchange Commission ("SEC") has not required such persons to register. In that letter, KOMA also noted that the investment adviser's client would receive appropriate disclosures (of the solicitor's compensation arrangement with the investment adviser) under current Board rules and stated that the SEC does not require registration of solicitors. The Board disagreed and adopted the definition substantially as proposed.

In the open meeting, the Staff of the State Securities Board explained that established agency practice has been to consider a person or entity, compensated for soliciting clients for a dealer or investment adviser, as a "link in the chain" of sale of a security or in the rendering of investment advice. A person or entity engaging in such an activity would be operating as an "agent," as defined in §4.D of the Texas Securities Act, and is required to be registered as such. Registration of solicitors as "agents" has long been required by the agency and is documented in the investment adviser registration package provided by staff to new applicants. Adding the proposed definition for "solicitor" would provide clear guidance on this practice to industry and practitioners. Other Board rules provide an exclusion from the registration requirements for certain types of professionals who refer clients to an investment adviser when such a referral is solely incidental to the professional's practice of his or her profession. Likewise, a person would not fall within the parameters of the proposed definition of a solicitor unless the person was compensated for the referral. The SEC does require firms that solicit for multiple investment advisers to be registered. The agency's current position, requiring registration of a person or entity compensated for soliciting clients for an investment adviser, is consistent with the SEC position and the agency's treatment of parties performing a similar function on behalf of dealers.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

§107.2. Definitions.

The following words and terms, when used in Part VII of this title (relating to the State Securities Board), shall have the following meanings, unless the context clearly indicates otherwise.

Solicitor - Any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709984
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 21, 1997
Proposal publication date: April 18, 1997
For further information, please call: (512) 305–8300

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Chapter 111. Securities Exempt from Registration

7 TAC §111.2

The State Securities Board adopts an amendment to §111.2, concerning listed and designated securities, with changes to the proposed text as published in the April 1, 1997, issue of the *Texas Register* (22 TexReg 3186). A comma was added after "dealer" in subsection (c).

The amendment modernizes the rule by updating terminology to current usage and conforming the format to current standards.

The rule notes that the Midwest Stock Exchange has been renamed the Chicago Stock Exchange and utilizes updated terminology.

One comment letter was received regarding the amendment. That letter, from Kuperman, Orr, Mouer & Albers, supported adoption of the amendment. The Board agreed and adopted the rule as published.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

§111.2. Listed and Designated Securities.

(a) Fully listed. As used in the Texas Securities Act, §6.F, "fully listed" includes any security listed or approved for listing upon notice of issuance on an exchange specified in the Act, §6.F, or on an exchange listed in subsection (b) of this section. The Midwest Stock Exchange, referenced in the Act, §6.F, has been renamed the Chicago Stock Exchange; thus, securities which at the time of sale have been fully listed upon the Chicago Stock Exchange fall within the exemption provided in the Act, §6.F.

(b) Approved exchanges. The Securities Commissioner has approved the following exchanges, by written order, as satisfying the requirements of the Texas Securities Act, §6.F, for eligibility:

(1) Pacific Stock Exchange;

(2) Chicago Board Options Exchange.

(c) Warrants for listed securities. In addition to sales made under the Texas Securities Act, §6.F, the Board, pursuant to the Act, §5.T, exempts from the registration requirements of the Act, §7, the offer and sale by the issuer itself, or by a registered dealer, of warrants to purchase securities of the issuer which at the time of sale of the warrants are exempt pursuant to the Act, §6.F.

(d) Recognized and responsible stock exchange. In order to implement the general purposes of the Texas Securities Act declared in §10-1.A to maximize coordination with federal and other states law and administration, particularly with respect to exemptions, the Board hereby defines the term "recognized and responsible stock exchange," as used in the Act, §6.F, not to include any organization which is not registered with the United States Securities and Exchange Commission as a national securities exchange pursuant to the Securities Exchange Act of 1934, §6.

(e) Who may sell. Securities described in the Act, §6.F, may be sold by or through a registered securities dealer acting either as a principal or agent.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709985
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 21, 1997
Proposal publication date: April 1, 1997
For further information, please call: (512) 305–8300

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Chapter 133. Forms

7 TAC §§133.15, 133.17, 133.19, 133.20, 133.24, 133.25

The State Securities Board adopts the repeal of six forms concerning dealer registration. Specifically, the forms repealed are: §133.15, the form for Application for Registration as an Individual Securities Dealer or Investment Adviser; §133.17, the form for Multiple Registration-Undertaking to Disclose Affiliations; §133.19, the form for Application for Registration of a Corporation or Partnership as a Securities Dealer or Investment Adviser; §133.20, the form for Application for Registration of an Officer or Partner; §133.24, the form for Application for Registration as a Securities Salesman or Agent; and §133.25, the form for Application for Transfer of Securities Salesman's Registration. The repeals are adopted without changes to the proposed text as published in the April 1, 1997, issue of the *Texas Register* (22 TexReg 3186).

The repeals eliminate unique Texas forms. Section 133.33 allows the use of uniform forms ADV, BD, and U-4 in lieu of the repealed forms. The requirements in §133.17 are covered by another rule in Chapter 115.

The repeals eliminate unnecessary forms.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 1, 1997.

TRD-9709986
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 21, 1997
Proposal publication date: April 1, 1997
For further information, please call: (512) 305–8300

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as a CPA

Educational Requirements

22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment §511.57, without changes to the proposed text as published in the June 20, 1997, issue of the *Texas Register*, (22 TexReg 5884).

The amendment allows the Board to recognize accounting courses which are accepted by educational institutions toward a baccalaureate degree or its equivalent.

The amendment will function by easing the restrictions on accounting courses which are acceptable to the Board.

No comments were received concerning adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §12 which authorizes the Board to issue rules regarding undergraduate courses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 24, 1997.

TRD-9710013
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: August 21, 1997

Proposal publication date: June 20, 1997
For further information, please call: (512) 505–5566

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22 TAC §511.58

The Texas State Board of Public Accountancy adopts an amendment §511.58, without changes to the proposed text as published in the June 20, 1997, issue of the *Texas Register*, (22 TexReg 5884).

The amendment creates a pool of applicants who completed courses the board considers necessary for a well-rounded CPA education.

The amendment will function by allowing the board to limit to 20 hours the number of hours of related business subjects the board will accept but expands the definition to also include those courses which the educational institution would accept.

No comments were received concerning adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §12 which authorizes the board to issue rules regarding undergraduate courses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 24, 1997.

TRD-9710014
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: August 21, 1997
Proposal publication date: June 20, 1997
For further information, please call: (512) 505–5566

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CPA Examination

22 TAC §511.60

The Texas State Board of Public Accountancy adopts an amendment §511.60, without changes to the proposed text as published in the June 20, 1997, issue of the *Texas Register*, (22 TexReg 5885).

The amendment allows the rule to use the correct name of the examination.

The amendment will function by changing the name of the examination to agree with the actual name of the current examination.

No comments were received concerning adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 24, 1997.

TRD-9710015
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: August 21, 1997
Proposal publication date: June 20, 1997
For further information, please call: (512) 505–5566

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22 TAC §511.73

The Texas State Board of Public Accountancy adopts an amendment to §511.73, without changes to the proposed text as published in the June 20, 1997, issue of the *Texas Register*, (22 TexReg 5885).

The amendment allows the rule to use the correct name of the examination.

The amendment will function by changing the name of the examination to agree with the actual name of the current examination.

No comments were received concerning adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 24, 1997.

TRD-9710016
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: August 21, 1997
Proposal publication date: June 20, 1997
For further information, please call: (512) 505–5566

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Certification

22 TAC §511.173

The Texas State Board of Public Accountancy adopts new §511.173, without changes to the proposed text as published in the June 20, 1997, issue of the *Texas Register*, (22 TexReg 5886).

The new rule allows the board to receive complaints or initiate investigations and to conduct hearings regarding eligibility of a candidate for a certificate based upon certain occurrences including the ones listed in this section.

The new rule will function by enabling the board to perform investigations and conduct hearings regarding the eligibility of a candidate for a certificate.

No comments were received concerning adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §12 which requires the board to ensure that applicants satisfy a moral character review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 24, 1997.

TRD-9710017
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: August 21, 1997
Proposal publication date: June 20, 1997
For further information, please call: (512) 505–5566

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22 TAC §511.174

The Texas State Board of Public Accountancy adopts new §511.174, without changes to the proposed text as published in the June 20, 1997, issue of the *Texas Register*, (22 TexReg 5886).

The new rule allows the board the ability to screen and exclude ineligible CPA applicants.

The new rule will function by listing the possible resolutions of an eligibility hearing and by describing the post-hearing procedure.

No comments were received concerning adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §12 which requires the board to ensure that applicants satisfy a moral character review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 24, 1997.

TRD-9710018
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: August 21, 1997
Proposal publication date: June 20, 1997
For further information, please call: (512) 505–5566

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22 TAC §511.175

The Texas State Board of Public Accountancy adopts new §511.175, without changes to the proposed text as published in the June 20, 1997, issue of the *Texas Register*, (22 TexReg 5887).

The new rule allows for the extension of the board's statutory investigative file confidentially to eligibility investigations.

The new rule will function by extending confidentiality coverage to this new investigative area.

No comments were received concerning adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §12 which requires the board to ensure that applicants satisfy a moral character review and §25 which makes the board's investigative files and investigations of candidates and licensees confidential.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 24, 1997.

TRD-9710019
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: August 21, 1997
Proposal publication date: June 20, 1997
For further information, please call: (512) 505–5566

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22 TAC §511.176

The Texas State Board of Public Accountancy adopts new §511.176, without changes to the proposed text as published in the June 20, 1997, issue of the *Texas Register*, (22 TexReg 5887).

The new rule allows for a clearer understanding of which activities will make an applicant's moral character unacceptable to the board.

The new rule will function by describing those activities which will make an applicant's moral character unacceptable to the Board.

No comments were received concerning adoption of the rule.

The rule is adopted under Texas Civil Statutes, Article 41a-1, §6, which provides the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §12 which requires the board to ensure that applicants satisfy a moral character review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 24, 1997.

TRD-9710020

William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: August 21, 1997
Proposal publication date: June 20, 1997
For further information, please call: (512) 505–5566

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TITLE 25. HEALTH SERVICES

Part XVI. Texas Health Care Information Council

Chapter 1301. Health Care Information

Collection and Release of Hospital Discharge Data

25 TAC §§1301.11–1301.19

The Texas Health Care Information Council (Council) adopts new §§1301.11-1301.19, relating to the collection and release of hospital discharge data. Section 1301.11 and §§1301.13-1301.19 are adopted with changes to the proposed text as published in the February 11, 1997, issue of the *Texas Register* (22 TexReg 1560). New §1301.12 is adopted without changes and will not be republished.

The changes in the proposed sections respond to public comments. The Council's representative from the Office of the Attorney General has advised that the changes made in the sections as adopted affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be less burdensome than under the proposed sections. Accordingly, republication of the adopted sections as new proposed rules is not required.

The Council's initial proposed Hospital Discharge Data (HDD) rules were published in the August 23, 1996, issue of the *Texas Register* (21 TexReg 7939). The Council received numerous comments, requiring considerable analysis. Because the Council determined that the initial comments warranted substantial revisions to the proposed sections, the Council withdrew the initial proposed sections. After incorporating many suggestions from the public comments, the Council proposed this revised version of the HDD rules in February 11, 1997, issue of the *Texas Register* (22 TexReg 1560) along with a preamble responding to public comments received on the first version of the proposed sections.

The new sections facilitate implementation of the statewide health care data collection system recommended by the Committee on Public Health in the *Interim Report to the 74th Texas Legislature*, November 1994 and mandated in House Bill (H.B.) Number 1048, of the 74th Legislature, codified in Title 2, Health and Safety Code, §§108.001-108.015. Subsequent to the date that the new sections were proposed the 75th Legislature enacted Senate Bill (S.B.) 802, effective September 1, 1997. The Council recognizes that S.B. 802 necessitates amendments to the new sections and intends to propose the necessary amendments at its August 1997 meeting.

Hospital discharge data is an integral part of the statewide health care data collection system the Council is charged to develop by Health and Safety Code, §108.006(a) "to facilitate the promotion and accessibility of cost-effective, good quality health care." The data to be collected by the Council pursuant to the new sections may be used by consumers, employers, health insurance plans, public health officials and health care providers for many purposes. For example, with proper risk and severity adjustments, the data supports reasonable comparisons of hospital charges, mortality rates and lengths of stay. The data allows employers and health insurance plans to make better informed choices when building provider panels. The data also provides information on the incidence and prevalence rates of certain diagnoses and procedures that require inpatient treatment. From a public health perspective the data can help identify high incidence geographic areas or at risk populations meriting public action and can help identify those hospitals delivering the best results so that other facilities can be encouraged to adopt "best practices".

The Council has designed the process for data collection to meet the explicit requirements of the enabling statute, to obtain data that is as complete and accurate as possible, and to impose only a reasonable burden on the reporting hospitals. In designing the process the Council has consulted with the National Association of Health Data Organizations, studied the approaches and experiences of other state health data systems, and received extensive input from Texas hospitals. As required by Health and Safety Code, §108.006(a)(2), the Council will contract for data collection with the Texas Department of Health (TDH).

New §1301.11 defines terms used elsewhere in the adopted sections. New §1301.12 requires reporting on all inpatients, describes the proper reporting of mother and newborn data, as well as multiple unit stays within the same hospital, describes reporting procedures for both insured and uninsured patients, notifies hospitals of the manner by which they will be advised of the address to send data, allows hospitals to designate an agent for data reporting purposes, and informs hospitals of the procedures to be followed for data verification by the Council through audit. The following paragraphs describe the details of §1301.12 and the Council's rationale in developing this section.

The data elements hospitals are required to submit under the new sections are those defined by the National Uniform Billing Committee. This set of data elements is commonly referred to as the UB-92 data set. In addition to the minimum data set (MDS), hospitals are required to submit any other UB-92 data elements that were submitted to the payer(s) for a particular patient.

The new section requires reporting on insured and uninsured patients. This requirement is consistent with the purpose of the data: to provide a complete view of patients treated in Texas hospitals. Because an estimated 27% of Texans have no health insurance, to collect data only on insured patients would not provide a complete or accurate picture of the incidence of diagnoses or procedures. Included in the Council's statutory charge is the duty to report to the legislature, the governor, and the public on "the quality and effectiveness of health care and access to health care for all citizens of this state." Without reliable data on the uninsured segment of the Texas population, the Council will be unable to comply with its complete statutory mandate.

The Council has attempted to reduce the administrative burden on hospitals by not requiring them to submit a single comprehensive discharge record for each patient. Instead the new sections allow hospitals to submit interim and supplemental bills just as they do for third party reimbursement. The Council takes the responsibility for consolidating multiple records on a single discharge. This procedure allows hospitals to submit interim, revised, final and other types of bills as they are generated and eliminates the need for them to "warehouse" bills prior to submitting them to the Council.

A data format is the way data elements are physically arranged on a paper or electronic record. Section 108.009(h) of the Council's enabling legislation requires it to accept data "in universally accepted standardized forms approved by the Council". The only universally accepted standardized paper form of which the Council is aware is the Health Care Finance Administration (HCFA) Form 1450; commonly referred to as the UB-92. Providers that do not possess electronic data processing capacity may submit data using this form.

New §1301.13 requires data to be submitted at least quarterly. If, however, hospitals wish to submit data more frequently, they may do so. The exemption process is designed to require hospitals to give notice of their submission schedules to allow the Council to ensure reporting systems are working properly.

The statute requires, and the new section provides for the creation of a public use data tape. The rule attempts to balance the public's right to the data with the public's interest in the validity of the data and protection of patient confidentiality. The Council's goal is to release public use data quarterly; about six months after the end of the reporting period.

Creation of the public use data tape from the data submitted by hospitals requires several steps. First, discharge records must be consolidated so there is one record covering each discharge. Second, uniform patient, uniform physician, uniform provider and uniform payer codes must be added by Council staff. Third, any data elements that could be used to identify a patient or physician must be deleted. Fourth, zip codes must be converted to multi-zip code areas and rural data must be aggregated. Hospitals and other providers are allowed to attach comments to the data. The discharge records will then be run through software to assign risk and severity scores to each record.

The Council has decided that no public use data will be released without risk and severity scores. The software to be used will be selected by the Council following the report of its Technical Advisory Committee September 1, 1997. The purpose of these scores is to allow a fair comparison of hospital outcomes, charges and lengths of stay. The Council has also decided not to release any data until it has six months of data available. This is to prevent erroneous conclusions from being drawn from data based on a small sample.

New §1301.15 sets out the specific process for requesting and obtaining an exemption from the requirement for electronic filing of discharge reports.

S.B. 802 directs the Council to accept electronic filings not only in the UB 92 format but also in "other universally accepted standardized forms" that hospitals "use for other complementary purposes." Accordingly, after adopting the new sections requiring electronic filings on the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0), the Council intends to amend the new sections to authorize filings using the ANSI-X12 837 Format developed by the American National Standards Institute and to create a process whereby hospitals may be granted authority to file using another format if they can demonstrate that the formats are "universally accepted standardized forms."

New §1301.15(b) clarifies how a hospital is to initiate a request for exemption.

New §1301.16 describes the process to be established for acceptance of discharge reports by the Council's executive director and for the correction of reporting deficiencies or errors. Specifically §1301.16(c) addresses errors in the data elements in individual patient bills. All bills received, regardless of medium, will be input to the Council's vendor's system. This is the same system on which hospitals now submit bills to Medicare, Blue Cross and other payers. Thus many hospitals are already familiar with this edit and correction process. Each bill will be edited on-line and either accepted or rejected for errors. If accepted, the discharge file will be deposited in the Council's electronic mailbox. If rejected, a notice with error messages will be placed in the hospital's electronic mailbox. Any discharge file that is rejected is deleted from the system and must be resubmitted. Hospitals that submit by modem will normally know immediately which records have been accepted and which rejected. The turnaround time for error reports for hospitals that submit bills on paper, tape or diskette will be longer because of the additional data entry or data conversion steps. The Council anticipates that full documentation of the edits to be applied will be provided to hospitals during hospital training sessions to be offered by or at the direction of the Council.

The edits performed in the vendor's system are at the level of individual bills. In combining multiple bills on the same discharge, in tracking individual patients across multiple discharges and in looking at the overall pattern of data received from a hospital, the Council will compare the data received to data on the hospital from other sources and perform additional logic and consistency checks on the data.

New §1301.17 provides time lines for an editing process. The vendor provides on-line editing and error notification of electronically submitted discharge records. The section provides that definitions of all data edits will be made available to hospitals to allow them to pre-edit their data. This is intended to reduce the cost and the time required to obtain accurate data. The section requires that hospitals give physicians and other health professionals the opportunity to review, correct, and comment on any discharge records on which they are shown as an admitting or treating the patient. The rule requires that a hospital's chief executive officer or the officer's designee certify the completeness and accuracy of the data submitted to the Council each quarter. The section delegates authority to the Council's executive director to determine when the data is complete and accurate enough for public use. The section is structured so that Council review of hospital medical records is an exception rather than routine occurrence.

To facilitate physician, hospital, and other health professional review and certification of data, the Council will provide quarterly an electronic data file to each reporting hospital containing the consolidated record for each patient discharged from that hospital that will allow physicians and other health professionals to view and append notes to records for which they are shown as the admitting or treating physician.

The process for certification of quarterly hospital data in the adopted version of §1301.17 varies from the proposed version. As adopted the executive director will provide each reporting hospital with a file of its data each quarter. The data file will have one record for each patient discharged by that hospital during the reporting quarter based on all discharge files the hospital has submitted regarding that patient. The hospital is responsible for reviewing the quarterly file and certifying it as complete and accurate, subject to any comments or corrections of data the hospital wishes to make. The hospital must afford its physicians or other health professionals the opportunity to review records of patients they admitted or are shown as treating. This change has required the creation of new subsections (a) and (b) and the renumbering of the previous subsections.

The adopted §1301.18 contains language authorizing the executive director to establish the process and procedures necessary to create the various codes and identifiers required by the statute and by other sections of these rules.

§1301.19:

The Council is required to prescribe by rule the process for providers to submit data consistent with §108.009. The components of a process to submit data includes a definition of the data elements to be submitted for coded data elements (e.g. diagnosis and procedure codes), a definition of the coding systems to be used, a definition of the format(s) in which the data will be submitted, a definition of the media on which data will be submitted, a schedule for submission and a location for submission. The National Uniform Billing Committee defines data elements and codes for certain of these elements. It does not define a data format for paper or electronic submission of hospital bills. The paper format for submission of inpatient hospital bills, commonly referred to as a "UB-92" is defined by the Health Care Finance Administration (HCFA) of the United States Department of Health and Human Services (DHHS). This paper format is also known as a "HCFA 1450," and is the only universally (or at least nationally) accepted paper format. In instances where the Council allows hospitals to use paper bills as the medium for data submission, the Council requires this format.

The Council has determined that the electronic format used for the most hospital bills is the HCFA electronic version of the form 1450 (HCFA UB-92 Electronic Format (Versions 004.1 and 004.0)); also known as the National Standard Format (NSF). Virtually all hospitals submit Medicare bills to HCFA electronically because it speeds payment and reduces billing costs. More than 40% of all inpatient hospital bills are for Medicare patients. The proposed section allowed hospitals to submit data in this format and that has not changed. Records will be accepted in the current and immediately preceding version of the format.

The data format maps the UB-92 data elements and provides unused fields for additional data elements. The Council recognizes that some hospital personnel who work with the UB-92s are unfamiliar with the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0). The Council will make available to anyone requesting it a crosswalk between the UB-92 elements and the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0).

§1301.19(f):

The Council has deleted this section because these specifications are part of the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) and do not need to be separately presented.

The Council has carefully considered all comments received on both versions of the proposed sections. The Council has considered the costs and benefits of various alternatives for all elements of the data collection process and believes the arrangements embodied in the adopted sections represent a cost-effective approach to meeting the requirements of the authorizing legislation. As with any new state program, the Council expects to find opportunities to improve the process as experience is gained.

Representatives of the following interested entities, groups, or associations presented testimony, citing one or more references, against the proposed sections published in the February 11, 1997, issue of the *Texas Register* (22 TexReg 1560) at the Public Hearings listed hereafter: March 3, 1997-HCIA; Texas Department of Mental Health and Mental Retardation; Baylor Health Care Systems; Parkland [Memorial] Health and Hospital System; Memorial Health System; Healthcare America, Inc.; Baylor Health Care System; March 10, 1997-South Austin Medical Center and Columbia St. David's Healthcare Systems; Columbia Mainland Medical Center; Columbia Doctor's Regional Medical Center; Hendrick Medical Center; Presbyterian Healthcare System; Scott and White Integrated Healthcare Delivery System and Texas Health Information Management Association; Providence Health Center; Park Plaza Hospital-Houston; Texas Hospital Association; Seton Healthcare Network; Daughters of Charity Information Services Entity.

Each of the following interested entities, groups or associations presented written comments, citing one or more references against the proposed sections published in the February 11, 1997, issue of the *Texas Register* (22 TexReg 1560): 3M Health Information Systems; Baylor Center for Extended Care, Abilene; Baylor College of Medicine; Baylor Health Care System; Baylor Institute for Rehabilitation; Baylor University Medical Center; Baylor/Richardson Medical Center; Citizens Medical Center; Columbia Doctor's Regional Medical Center; Columbia Mainland Medical Center; Columbia Spring Branch Medical Center; Columbia St. David's Healthcare System; Consumers Union; Cypress Fairbanks Medical Center, Inc.; Daughters of Charity National Health System; Driscoll Children's Hospital, Corpus Christi; Friend and Associates, L.L.P.; Gonzales County Hospital District; GranCare Specialty Hospital of Houston; Greater San Antonio Hospital Council; HBO and Company; Harris Methodist, Fort Worth; Health Care Information Association; Healthcare America Incorporated; Hendrick Medical Center; Hermann Hospital, Houston; Houston Columbia/HCA and Columbia Mainland Medical Center; Irving Healthcare

System; Jenkins and Gilchrist; Memorial Healthcare System; Methodist Hospitals of Dallas; Methodist Hospital, Houston; Methodist Hospital, Lubbock; Park Plaza Hospital, Houston; Parkland Memorial Health and Hospital System; Presbyterian Healthcare System; Providence Health Center; Quest Hospital, Amarillo; Scott and White Hospital; Seton Healthcare Network; Seton Healthcare Network, Austin; Sisters of Charity of the Incarnate Word Health Care System; St. Luke's Episcopal Hospital; Summit Hospital of Central Texas; Texas Children's Hospital, Houston; Texas Department of Mental Health and Mental Retardation; Texas Health Information Management Association; Texas Hospital Association; Texas Medical Association; Texoma Medical Center, Denison; Titus Region Medical Center.

General Comments Unrelated to Specific Sections.

Costs to Hospitals of Compliance with the Rule.

Numerous comments expressed concerns regarding the costs that the hospitals would incur to comply with the February 11, 1997 version, specifically referencing the preamble statement of the estimated total cost to all the hospitals that are required to submit data to the Council. Concerns over costs, and the Council's responses, fall into the following categories:

1. Quarterly submission of data. Several comments indicated that hospitals did not today retain all UB-92 data for an entire quarter, and to do so would require them to incur substantial programming costs and hardware to build data repositories to store data for later submission to the Council. While the statute does not allow the Council to require hospitals to submit data more often than quarterly, the new sections allow hospitals to submit bills daily if desired. No additional data storage at the hospital level is needed to comply with the section as adopted.

2. Standard data format. Several comments indicated that hospitals would incur substantial costs from having to reprogram their billing systems to produce bills in the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0). The Council has met with information systems managers representing large and small hospitals on this issue and believes these costs need not be incurred to comply with these rules. The Council will accept bills in the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) . Almost all hospitals, and all those that submitted comments, bill Medicare electronically to reduce reimbursement lag and billing expense. All Medicare and Medicaid bills must be submitted electronically in the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0). These bills represent a significant portion of the total number of bills a hospital produces. Therefore, either the hospital's billing system can already generate bills in the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0), or the hospital is sending a print image file to a data conversion firm. If the hospital is generating its own HCFA UB-92 Electronic Format, there should be no significant reprogramming necessary to generate a file of all bills in that format.

The Council is aware of several firms that currently take print image billing files from Texas hospitals and convert them to the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) for Medicare, Medicaid and to this or other formats for other payers. These firms have the capability of generating a complete billing file in the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) for their hospital clients and forwarding it to the Council. Hospital information systems managers advise the Council that these firms charge hospitals from $0.25 to $0.50 per bill for converting the hospital's print image file and forwarding it to payers.

Hospitals that utilize these companies are already paying the per bill conversion cost for their bills that go to Medicare or Medicaid. If the bill is to go to a payer using a different format, or if the bill is for an uninsured patient and is only being submitted to the Council for reporting purposes, the hospital may have to incur a charge of $0.25 to $0.50 per bill for the conversion to the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0).

In 1995 there were total of 2.24 million admissions/discharges from Texas hospitals based on the 1996/1997 AHA Hospital Statistics. The Council is advised that an average of two bills per discharge is reasonable for planning purposes. This means a total of 4.48 million bills annually. Assuming 50% of Texas hospital bills are currently submitted to Medicare or Medicaid in the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0), the cost for submitting these bills to the Council in this format will range from nothing to a few cents per bill. For planning purposes we will assume a cost of $.10-$0.25 per bill whether the hospital does the work itself or uses a conversion company.

For the other 50% of hospital bills, the cost will range from nothing to $0.50 per bill depending on whether: (1) the hospital already has the capability to convert and transmit the bill itself; (2) the bill is already being converted to the HCFA format for that payer; and (3) hospitals and the Council can work together to convince data conversion firms to send a copy of the data in the HCFA UB-92 Electronic Format to the Council's vendor at no or a small cost to the hospital. For planning purposes the Council assumes a cost of $0.50 per bill.

This leads to the following calculations:

4.48 million bills x 50% x $0.25 = $560,000;

4.48 million bills x 50% x $0.50 = $1,120,000;

Total Estimated Conversion Cost = $1,680,000.

Therefore the Council estimates annual conversion costs for hospitals to submit bills to the Council in the HCFA format will not exceed $1,680,000. The Council has used a worst case scenario in developing these costs and believes that actual costs will be less than calculated. Hospital admissions have declined since 1995. Additionally, the Council notes that Public Law 104-191 enacted by Congress in 1996 directs the development of a single U.S. standard all payers must accept by 1998. When this standard is developed the Council will accept data filings in the standard format, thus eliminating billed claim conversion costs altogether.

3. Submission of minimum data set on uninsured patients. Some comments suggested that hospitals may incur substantial costs to generate the Council's minimum data set in the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) for those uninsured patients for whom the hospital would not normally have generated a bill. The Council agrees that hospitals will incur costs to provide data on uninsured patients. The Council is required by §108.006(9)(D) of its enabling legislation, however, to make reports to the legislature, governor, and the

public on "the quality and effectiveness of health care and access to health care for all citizens of this state." If hospitals do not report discharge data on uninsured patients, then an information gap will exist for a significant population of this state's citizens. The Council believes that its statutory duties require the collection of discharge data on uninsured patients.

4. Submission of social security numbers, race and ethnicity. Many hospitals commented that the requirement that they collect and submit each patient's social security number, race and ethnicity would generate costs for reprogramming systems and training staff. The Council agrees that certain costs will be attributable to the collection of this data and has omitted collection of this information in the adopted sections. The Council is required by S.B. 802, however, to collect patient race and ethnicity information after September 1, 1997, and will publish a proposed amendments to these sections for the collection of this information in the future. The Council is also directed to develop uniform patient identifiers. The Council may determine that amendments providing for the reporting of patient social security numbers are needed for this purpose.

Comments and Changes Related to Specific Sections:

§1301.11, Definitions:

One comment suggested the definitions for "discharge file" and "discharge report" need to be clarified to say they represent a "snapshot of the patient at discharge". The Council disagrees with the suggested clarification. A discharge file corresponds to a single patient bill. There will be one or more bills for each patient, except as noted. If the hospital issues an interim bill for a patient prior to discharge, or a revised bill for a patient several weeks after discharge, there will be a separate discharge file corresponding to each bill. The discharge report is a group of discharge files for various patients submitted by a hospital at least quarterly, but as often as each hospital wishes.

One comment expressed concern whether the definitions of "facility identifier" and "uniform payer identifier" implied that the names of the facilities (hospitals) and payers associated with the identifiers would not be made public. The Council agrees and has added language to both definitions to clarify that the relationship of the identifiers and the names of the facilities and payers is public information.

One comment suggested the definition of "Uniform Physician Identifier" should be limited to persons licensed to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). The comment recommended that a separate identifier be created to identify other health care professionals who are reported by a hospital to be admitting or treating a hospital inpatient. The Council agrees and has modified the definition of "uniform physician identifier" and created a new definition for "uniform other health professional identifier".

§1301.12. Collection of Hospital Discharge Data.

One comment indicated that the Veterans Administration, for example, provides services to so many inpatients within the state that failure to include their data could leave gaps in health information on Texas residents. To the extent that military hospitals treat Texas residents (as opposed to military personnel temporarily stationed at Texas bases), they should also be encouraged to participate to get an accurate picture within the state. The Council agrees and has added language authorizing the executive director to work with exempted providers to encourage them to voluntarily participate.

§1301.12(b):

One hospital asked how hospitals were to report patients who were served in the acute care portion of a hospital and were then transferred to a diagnosis-related group (DRG)-exempt unit of that hospital. Such units could be skilled nursing units, psychiatric units, comprehensive medical rehabilitation units or long-term care units. The answer depends upon the payer. The majority of these patients are Medicare patients. Medicare requires that the hospital bill separately for the patient's acute care admission and for the admission to the DRG-exempt unit. The hospital should therefore submit to the Council a separate discharge record for the admission to each unit or facility. The Council will use the data elements on both records to assign a unique patient identifier to provide a clear picture of the overall inpatient episode. Other payers may require the hospital to provide a single bill for the total stay. If so, the hospital would provide the Council with one discharge record. The Council believes the data elements on the record (e.g., revenue codes, conditions and occurrence codes, etc.) will allow proper interpretation of the data for analytical purposes. This approach will minimize any data processing burdens on the hospitals. The Council has also provided that on each patient record on the public data tapes that acute and subacute care days will be reported separately.

Several comments were received offering differing opinions of how the rule should handle newborns. Several comments indicated that they believed the proposed section requires hospitals to report all newborns consistently, either all on separate bills or all on the same bill with the mother. The Council disagrees with these comments. This new section instructs hospitals to report newborns as they were actually billed to the insurance carrier and requires separate records for births only where there is no third party coverage. The Council believes this approach minimizes incremental work for hospitals to satisfy the reporting requirements. Another comment expressed concern as to whether the Council could perform the processing necessary to separate newborns on joint bills. The Council plans to study this issue using the test data hospitals are to submit and determine if a change to the rule is needed.

One hospital commented that it should be allowed to submit interim bills rather than having to consolidate all bills into one discharge record. Subsection (b)(2) allows interim submissions. Another hospital commented that the new section should allow the option to combine all bills related to a single patient discharge into one discharge file. The adopted section allows but does not require this practice.

One hospital commented that inpatients frequently have a series of multiple payers, each requiring the previous payers' payment information to be included with their claim so they can calculate the remaining balance to be paid. The hospital believes this required additional payer information will cause hospitals to frequently and continuously update previously submitted claims data to the Council leading to additional incurred cost. The Council disagrees with this analysis. The

adopted section does not require hospitals to develop an archival data base. The section authorizes hospitals to send the Council copies of the bills as they are sent to payers. This includes revised and resubmitted bills whenever they occur. The adopted section does not require hospitals to maintain the earlier bills sent to the Council and update them.

Numerous hospitals commented that hospitals should not be required to submit discharge records on self-pay and charity care patients for whom a UB-92 had not been sent to any payer. Some hospitals indicated that such patients are 15% to 25% of their total patients. One hospital commented that it currently uses a vendor to take its data and process the data to the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0). The hospital pays the vendor a charge per record reformatted. At present only records to be billed electronically are sent to the vendor. Using the vendor to prepare records for the Council on patients not currently billed electronically will increase payments to the vendor and hence increase hospital costs. The particular hospital indicates this would increase the number of records processed by its vendor by 20-25%. The Council agrees that to the extent the furnishing of discharge data on self-pay and uninsured patients will cause the generation of additional record keeping, hospitals will incur increased costs. Section 108.006 of the Council's enabling legislation directs the Council to "develop a statewide health care data collection system to collect health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care." Additionally, the Council is required by §108.006(9)(D) of its enabling legislation to make reports to the legislature, governor, and the public on "the quality and effectiveness of health care and access to health care for all citizens of this state." The Council cannot carry out these mandates by looking only at the health services delivered to insured patients. If hospitals do not report discharge data on self-pay and charity patients, then an information gap will exist for a significant population of this state's citizens. The Council believes that its statutory duties require the collection of discharge data on uninsured patients.

The Texas Department of Mental Health and Mental Retardation (TDMHMR) objected to being required to submit UB-92 data on its patients because most are indigent and are not billed. The Council is unable to find a reporting exemption for TDMHMR facilities in its enabling legislation.

1301.12(g):

One comment suggested that the Council pay the cost of copying any hospital records it requested pursuant to this section. Another comment suggested that this section more closely track the statutory language in §108.007(a) regarding the role of the Texas Department of Health (TDH). Another comment noted that any reviews of medical records could be costly to the hospital and impose an administrative burden. The Council disagrees with these comments. The adopted section closely tracks §108.007 of the Council's statute. Any review of records by the Council is in the nature of an audit of the hospital for the enforcement of the statute and the verification of the data. The Council does not believe it is customary for the State to pay for copies of records in this situation. Additionally, the Council notes that the legislature did not authorize the Council to pay for the costs of the records. The Council believes the proposed rule provides the "reasonable rules and guidelines" mentioned in §108.007.

1301.13(a):

One comment recommended that the Council predicate the start date of the program, meaning the first day of data collection on required elements for all inpatients, upon the contingent effective date of the rule allowing for the passage of a minimum of 90 days between the two. The Council agrees that some delay is appropriate and notes that S.B. 802 provides that a rule which requires the submission of new data elements may not take effect sooner than 90 days after the day that the rules are adopted. Accordingly, although the new sections are effective 20 days after they are filed with the Office of the Secretary of State, the Council has moved back the date for data collection and reporting to begin with discharges occurring January 1, 1998.

Numerous comments indicated that 60 days might be inadequate for the hospitals to file discharge reports if they reported only on a quarterly basis. The Council would like to clarify that hospitals may report more frequently than quarterly, if they choose to do so. In arriving at the requirement that hospitals submit and certify their discharge records by 60 days after the end of the quarter, the Council consulted with the National Association of Health Data Organizations regarding the practices in other states operating similar hospital discharge collection systems. The 60-day period appears reasonable, and the Council declines to make any change. Hospitals are only responsible for submitting bills that have been issued by 60 days after the end of the quarter in which the discharge occurred. The Council notes that there may be revised bills submitted for a patient later than 60 days after the end of the quarter in which the discharge occurred. The Council will process these bills in the subsequent quarter and update its data base.

1301.13(b):

Because of delays in final adoption of these rules, the Council has moved the period for test data to the first quarter of 1998. This action responds to numerous comments received from hospitals and coincides with the Council's schedule for the development of a data warehouse.

One comment requested that data on psychiatric patients be excluded from the test phase because the risk of unauthorized disclosure during the test phase was higher. The Council disagrees with this comment. Patient identifying data elements will not be submitted on any patient. Therefore there is no reason to treat bills for psychiatric patients differently.

1301.13(d):

Several commenters said the mention of civil penalties in the rules was harsh and not consistent with the cooperative environment that the Council seeks to develop with health care providers. Another commenter requested a delay in the effective date for the assessment of civil penalties to reflect the spirit of the Council's cooperation with hospitals. The comment recommended a concluding sentence be added to proposed §1301.18(c)(1)(C) to read: "During this testing period, no civil penalties will be assessed," and adding a concluding sentence to proposed §1301.18(c)(1)(D) to read: "During the last two

quarters of 1997 and the first two quarters of 1998, no civil penalties will be assessed." The Council disagrees with these comments. The Council included these references to civil penalties to give fair notice to all concerned of the Legislature's action. The application of such penalties is not automatic. The statute provides that the Attorney General would seek such penalties only at the request of the Council. The Council has no intention of resorting to enforcement actions except as a last resort when all other efforts to obtain cooperation and compliance with the rules have failed. The Council is mindful that there is much trial and error at the start of every data collection program.

§1301.14:

One commenter objected to the limitations on the number of tapes or diskettes per submission because it estimates its quarterly submission would cover 16,000 discharges requiring a large number of tapes or diskettes. The Council declines to remove the restriction. Submitting hospital bill data on magnetic media is intended primarily for use by small hospitals. The Council expects hospitals of this size to transmit bills by electronic data interchange (modem) or to have a vendor do it for them. The Council strongly encourages data submissions of this size to be by modem.

One comment noted that proposed §1301.14(a)(4) and (b) state that the Council will notify hospitals 90 days prior to changes in the instructions for filing discharge reports on magnetic media or by electronic data interchange, and recommended the method of communicating these changes to hospitals be included. The Council agrees and has added language requiring the executive director to give notice directly in writing to hospitals and their agents. Writing may be by mail or facsimile.

Another comment said the 90-day time frame is unrealistic given the time required to rewrite hard coded computer programs. The comment recommended at least 120 to 180 business days be allowed for the process of changing the computer program, test verification and live product production testing. The Council disagrees with this comment. The lead time given should be reasonably related to the magnitude of change in the process. The adopted section gives the executive director discretion to give more than 90 days' notice when necessary. §1301.16(b):

Several comments indicated that hospitals would need more than ten days for refiling when discharge reports are rejected for failing to satisfy minimum criteria for processing. The Council disagrees with these comments. This section deals only with improper media, physically damaged media or problems with the file structure of the submission. These are errors that would be corrected by the hospital generating and re-sending a replacement file. This would normally be done in a few days from the files used to prepare the original.

Several comments suggested that the Council should establish an acceptable error rate and/or error rate threshold. The Council disagrees. The new section delegates to the executive director the authority to determine when a hospital's data is sufficiently complete and accurate. The Council expects the executive director to take a reasonable approach to this question and expects hospital performance to improve over time.

Two comments suggested that hospitals would incur the greatest cost correcting errors in inactive accounts, due to manpower and processing. This cost would occur if the hospital holds all discharge files for a quarter and submits them all at once. While the Council cannot require hospitals to submit data more often than quarterly, hospitals may submit data more frequently, even daily if they choose to do so. Once data is transmitted to the vendor's system, edits occur immediately and the hospital will know of any errors immediately. This will eliminate the need to retrieve archived data. This arrangement gives hospitals the ability to submit data on schedules they determine will produce optimal efficiency.

One comment asked that hospitals be able to resubmit a rejected discharge file rather than submit corrections to individual data fields. The Council agrees and has made provisions for this to occur.

Comments and responses to comments refer to the numbering in the February 11 proposed rule.

§1301.17(a):

Several comments recommended that a "designated person" selected by the CEO or CFO be added to the list of who should be allowed to sign for certification of discharge reports. The Council agrees and has modified this section, deleting reference to the chief financial officer and allowing the chief executive officer to sign the certification or to designate an agent.

§1301.17 (b):

One comment expressed concern over the practicality of having physicians review the accuracy of the data. The comment noted that hospital records to be submitted are not maintained in a format that allows complete review by either the hospital or physicians and that the billing system is a very dynamic database. The comment fears that physician review would require either printing a hard copy of the UB-92 or creation of a system for on-line review. The Council has addressed these concerns by requiring the executive director to supply each hospital quarterly an electronic data file designed to facilitate review by hospitals, physicians, and other health professionals.

Comments also expressed concern that the proposed section directs hospitals to require physicians to review and verify the data. The Council disagrees. The adopted section requires only that the admitting physicians have the opportunity to review, request corrections of, and comment on the data.

Other comments expressed concern that physicians would violate patient confidentiality by reviewing records in which they have no legitimate interest. The Council disagrees and believes that the system will contain adequate safeguards to protect patient confidentiality by limiting physician access only to records of patients for whom they are the admitting or treating physicians.

§1301.17 (c):

One commenter expressed concern that data will not be available to the public until seven months after the end of each quarter, which means data from the first part of the quarter will be ten months old when released. The comment noted that the data is due at the THCIC two months after the end of the quarter and giving the facility four more months to "check" it

seems excessive. The comment recommended that the rules clearly state that any data not certified within this period of time is deemed acceptable and will be released to the public. The commenter hopes after the system at the Council has been up and running for a while, this time frame will be shortened. The comment is concerned that due to the lag time of public dissemination, the Council's data will not be attractive and possibly irrelevant to those seeking Texas information. A review of the data release schedules in other states suggests that six months is typical. The Council agrees that it would be desirable to make the data available more quickly and this may be possible in the future. At the initiation of the program, however, the Council believes the schedule in the new section is reasonable.

§1301.17(d):

Comments were received asking that the Council waive in advance all civil penalties during initial implementation. The Council disagrees with this comment but has no intention of asking for such penalties unless extreme situations should arise.

§1301.18:

One commenter opposed the release of public use data files or statistical compilations based on those files. The objections to release of the public use data file to the public in this comment apply whether or not the records include quality adjustment factors. The Council disagrees with this comment. The provisions of the statute concerning confidentiality and general access to data reinforce the view that the Council has the obligation to create a public use data file from the hospital discharge data and make this file available to the public. The Council is required to use data received by the Council for the benefit of the public and to make determinations on requests for information in favor of access. The Council's enabling legislation, §108.013(a) makes information received by the Council, once modified to protect patient and physician confidentiality, subject to the Open Record's Act.

Several commenters questioned whether the release of a public use data file would lead to correct perceptions of the comparative quality of various hospitals. The Council believes that by providing risk and severity adjustment scores which will then be applied to the data by users, the risk of incorrect perceptions of comparative quality should be minimized.

Several comments questioned the release of hospital gross charges because few patients actually pay gross charges. The Council believes gross charge data should be included on the public use data file. Charge data in conjunction with data such as Medicare cost reports and the TDH/THA/AHA annual hospital survey can be analyzed to produce reasonable comparative estimates of hospital costs and net reimbursement for various services.

One comment disagreed with the Council's determination that the statute did not permit inclusion of the uniform patient identifier on the public use data file. We believe the question has been clarified by S.B. 802 which requires the Council to include uniform patient, physician and other provider identifiers on the public use data file. The public use data file will not, however, reveal the name of any patient or physician.

Several comments asked for some "adjustment in the data itself." The Council disagrees with these comments. The addition of risk and severity scores is the professionally accepted approach to providing meaningful comparisons of health care providers.

Several comments asked that the public use data file indicate whether a hospital is a children's specialty hospital or a teaching hospital. The Council agrees it would be helpful to have this information on each patient record, and the adopted section provides for the inclusion of this information.

§1301.19:

Comments were received from many hospitals that the format for data submission was nonstandard and would require substantial reprogramming of computer systems on the part of Texas hospitals, require extensive lead time and subject them to great expense. The commenters generally requested that hospitals be able to submit data in whatever form they choose, leaving it to the Council to translate the data to a standard format. The Council disagrees with these comments. As stated previously in this preamble, the Council has determined that the electronic format used for the most hospital bills is the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0), the electronic version of the form 1450. Any hospital that submits Medicare bills to HCFA electronically must use the HCFA UB-92 Electronic Format UB-92 (Versions 004.1 and 004.0). Most hospitals have the capability to submit data in this format. The Council does not interpret §108.009(h) of its enabling legislation as authority for hospitals to file data in whatever form they choose.

One comment indicated that its hospital policy was to redact patient names and replace them with patient account numbers or medical record numbers before releasing data. Adopted §1301.19(e) removes the requirement that hospitals furnish patient names.

Several commenters stated that federal statutes and regulations restricting the release of information on psychiatric and substance abuse patients might prevent hospitals from supplying information on these patients, and thus require changes in the definition of "Inpatient." The Council has removed from these rules the requirement that patient identifying data elements be submitted on any patient.

Some hospitals objected to the requirement that hospitals collect and report the patient's Social Security Number. They further objected to identifying the reason no Social Security Number was available for patients without one. Some said this would require additional work by hospital staff. Others said that requesting it might be offensive to the patient for various reasons, including it as an attempt to screen out aliens. Hospitals also said the Social Security Number should not be collected because it was not part of the UB-92 data set. The Council understands that Social Security Numbers are not always available or reliable. The Council agrees that it is not necessary to assign codes for reasons the social security number is missing from a given discharge. The adopted sections do not require the reporting of Social Security Numbers. The absence of this information will prevent the Council from initially assigning a Uniform Patient Number as

required by S.B. 802. The reporting of Social Security Numbers may be the subject of a future rule-making proceeding.

Some commenters questioned the statutory authority of the Council to collect data on patient race and ethnicity because these data elements are not part of the UB92 data set. The Council has omitted the requirement that hospitals report patient race and ethnicity data from §1301.19 as adopted.

Some hospitals objected to the source of payment codes that hospitals would be required to use. One commenter indicated that the category for Blue Cross transcends other categories listed such as HMO's and PPO's and further noted that other unusual hybrid combinations of HMO's and PPO's exist in the marketplace. Another hospital questioned how to code when a patient is covered by multiple payers. The Council, through its training sessions, will provide direction on how to appropriately categorize these unique situations to ensure consistency across reporting hospitals and data accuracy.

One commenter cited problems with the "self-insured" category noting that "there is no way to look at an insurance card and determine if an individual's company is self-insured." The Council agrees and has omitted this category.

One comment requested a clarification between the categories of "charity/self pay" and "other self pay." The Council recognizes the confusion and has omitted the "other self pay" category.

One hospital indicated they would incur increased costs to comply with the Council's source of payment codes. The Council disagrees. The source of payment code list follows the codes and categories already in place as determined by the National Uniform Billing Committee with four additional categories. These four categories are also already used by a large group of Texas hospitals in other data reporting programs. Therefore, the Council adopts the proposed source of payment code list with the two omissions noted previously.

The new sections are adopted under the Health and Safety Code, §108.006(a) and §108.009. The Councils interprets §108.006(a) as authorizing it to adopt rules necessary to carry out Chapter 108, including rules concerning data collection requirements, to prescribe by rule the process for providers to submit data. The Council interprets §108.009 as authorizing it to adopt rules for the implementation of data submission in stages to allow for the development of systems for the collection and submission of data and as requiring it to develop data submission procedures for providers lacking electronic submission capabilities.

§1301.11. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Batch file-A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes) which contains one or more discharge files and other required header and trailer records. A batch contains discharge files for only one hospital.

Charge-The amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances, government mandated fee schedules or write-offs for charity care, bad debt or administrative courtesy. The term does not include co-payments charged to health maintenance organization enrollees by providers paid by capitation or salary in a health maintenance organization.

Council-The Texas Health Care Information Council.

Discharge-The formal release of a patient by a hospital; that is, the termination of a period of hospitalization by death or by disposition to a residence or another health care provider.

Discharge file-A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes) relating to a specific patient. Except for some normal newborn infants there will be one or more discharge files for each inpatient.

Discharge report-A computer file as defined in §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes) periodically submitted on or on behalf of a Hospital in compliance with the provisions of this chapter.

Electronic filing-The submission of computer records in machine readable form by modem transfer from one computer to another or by recording the records on a nine track magnetic tape, computer diskette or other magnetic media acceptable to the executive director.

Error-Data submitted on a discharge report which are not consistent with the format and data standards contained in this section or with editing criteria established by the executive director, or the failure to submit required data.

Executive director-The chief administrative officer of the Council, or, in the event the Council is without an executive director, the person designated by the chairperson of the Council to perform the functions and exercise the authority of the executive director.

Health care facility-A hospital, an ambulatory surgery center licensed under Chapter 243 of the Health and Safety Code, a chemical dependency treatment facility licensed under Chapter 464 of the Health and Safety Code, a renal dialysis center, a birthing center, a rural health clinic or a federally qualified health center as defined by 42 United States Code, §1396(1)(2)(B).

Hospital-A public, for-profit, or nonprofit institution licensed or owned by this state that is a general or special hospital, private mental hospital, chronic disease hospital or other type of hospital.

Geographic identifier-A set of codes and accompanying maps prepared by the Council covering Texas and adjacent states with each code consisting of two or more zip codes, a set of codes and accompanying maps prepared by the Council covering the rest of the United States consisting of three digit zip codes, a set of codes and accompanying maps prepared by the Council covering Canada and Mexico consisting of a separate code for each state or province and a set of codes for each of the other countries.

Inpatient-A patient, including a newborn infant, who is formally admitted to the inpatient service of a hospital and who is subsequently discharged, regardless of status or disposition. Inpatients include patients admitted to medical/surgical, intensive care, nursery, subacute, skilled nursing, long-term, psychiatric, substance abuse, physical rehabilitation and all other types of hospital units.

Other health professional-a person licensed to provide health care services other than a physician. An individual other than a physician who admits patients to hospitals or who provides diagnostic or therapeutic procedures to inpatients. The term will encompass persons

licensed under various Texas practice statutes, such as psychologists, chiropractors, dentists and podiatrists who are authorized to admit or treat patients.

Patient control number-A number assigned to each patient by the hospital which appears on each computer record in a patient discharge file. This number is not consistent for a given patient from one hospital to the next, or from one admission to the next in the same hospital. The Council deletes or encrypts this number to protect patient confidentiality prior to release of data.

Physician-An individual licensed under the laws of this state to practice medicine under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

Provider-A physician, health care facility or health maintenance organization.

Public use data file-A data file composed of discharge files with risk and severity adjustment scores which have been altered by the deletion, encryption or other modification of data fields to protect patient and physician confidentiality and to satisfy other restrictions on the release of hospital discharge data imposed by statute.

Required minimum data set-The data elements which hospitals are required to submit in a discharge file for each inpatient regardless of whether or not the hospital would have prepared a bill for the inpatient. The required minimum data set is specified in §1301.19(d) of this title (relating to Discharge Reports-Records, Data Fields and Codes).

Rural provider-A provider located in a county with a population of not more than 35,000 according to the most recent United States Bureau of the Census estimate, those portions of extended cities that the United States Bureau of the Census has determined to be rural, or an area that is not delineated as an urbanized area by the United States Bureau of the Census.

Submission-A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes) that constitutes the discharge report for one or more hospitals.

Submitter-The person or organization which physically prepares discharge reports for one or more hospitals and submits them to the Council. A submitter may be a hospital or an agent designated by a hospital or its owner.

Uniform facility identifier-A unique number assigned by the Council to each health care facility in the state. For hospitals this will be the hospital's state license number. Where a hospital operates multiple facilities under one license number, the Council will assign a suffix for each separate facility. The relationship between facility identifier and the name, license number, and assigned suffix of the facility is public information.

Uniform other health professional identifier-A unique number assigned by the Council to an individual other health professional who is reported as admitting or treating a hospital inpatient, and composed of numeric, alpha, or alphanumeric characters, which remains constant across hospitals. The relationship of the identifier to the health professional-specific data elements used to assign it is confidential.

Uniform patient identifier-A random number assigned to an individual patient which remains constant across hospitals and inpatient admissions.

Uniform payer identifier-A unique number assigned by the Council to every third party payer of UB-92 bills. Whenever possible the Council will use established numbering systems such as that maintained by the National Association of Insurance Commissioners. The relationship between payer identifier and the name of the payer is public information.

Uniform physician identifier-A unique number assigned by the Council to any physician or other health professional who is reported as admitting or treating a hospital inpatient which remains constant across hospitals. The relationship of the identifier to the physician-specific data elements used to assign it is confidential.

§1301.13. Schedule for Filing Discharge Reports.

(a) For discharges occurring on or after January 1, 1998, hospitals shall file discharge reports according to the following schedule as shown in paragraphs (1)-(4) of this subsection unless a hospital has received an exemption letter from the Council.

(1) Each discharge report covering inpatient discharges occurring between January 1 and March 31, inclusive, shall be submitted no later than June 1 of the calendar year in which the discharge occurred.

(2) Each discharge report covering inpatient discharges occurring between April 1 and June 30, inclusive, shall be submitted no later than September 1, of the calendar year in which the discharge occurred.

(3) Each discharge report covering inpatient discharges occurring between July 1 and September 30, inclusive, shall be submitted no later than December 1 of the calendar year in which the discharge occurred.

(4) Each discharge report covering inpatient discharges occurring between October 1 and December 31, inclusive, shall be submitted no later than March 1 of the year following the year in which the discharge occurred.

(b) On or before May 31, 1998, hospitals shall submit a discharge report drawn from inpatient discharges occurring between January 1, 1998 and March 31, 1998, inclusive. This discharge report shall be used for test and certification purposes only. The discharge report may include all discharges for the quarter, but the hospital is only required to submit discharge files covering discharges for any consecutive 30 days of the quarter.

(c) Extensions to processing due dates may be granted by the executive director for a maximum of ten working days in response to a written request signed by the hospital's chief executive officer. Requests must be in writing, must be received at least five working days prior to the due date and must be accompanied by adequate justification for the delay.

(d) Failure to file a discharge report on or before the due date without an extension, is punishable by a civil penalty pursuant to Health and Safety Code, §108.014. Discharge Reports.

§1301.14. Instructions for Filing.

(a) Magnetic Media-A discharge report may be filed on computer diskettes, nine track tapes or other magnetic media approved by the executive director. All discharges shall be reported using the same file and record formats specified in §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes) regardless of medium.

(1) Media specifications are:

(A) Diskette: MS-DOS formatted; PC Text file (ASCII); Record length = 192 characters, fixed; 3.5 inch diskette, 1.4 megabyte, high density.

(B) Nine track tape: Density = 1600 or 6250 BPI, nine track; Collating sequence = EBCDIC or ASCII; Record length = 192 characters, fixed; Blocking = unblocked; Labeling = no label.

(C) Other magnetic media: Discharge reports may be filed on other magnetic media only with the prior written approval of the executive director. The executive director will not normally approve any medium which the Council is not currently equipped to read.

(2) Hospitals shall submit no more than one tape or two diskettes per submission, with the following external identification affixed as listed in subparagraphs (A)-(G) of this paragraph:

(A) hospital name;

(B) facility identifier;

(C) reporting period for discharges;

(D) number of records by record type;

(E) tape density: 1600/6250 BPI (if applicable);

(F) collating sequence for tapes (if applicable);

(G) the description: "DISCHARGE DATA".

(3) Data for more than one hospital may be submitted on a single tape if the submitter provides external identification items (A) through (D) for each hospital.

(4) In addition to the provisions of this section, the Council shall document instructions for filing discharge reports on magnetic media and shall make this documentation available to hospitals at no charge and to the public for the cost of reproduction. The Council shall notify hospitals or their designated agents directly in writing at least 90 days in advance of any change in instructions for filing discharge reports on magnetic media. The Council's instructions shall follow Department of Information Resources standards for magnetic media established under Chapter 201 of this Title.

(b) Electronic Data Interchange: Discharge reports may be filed by modem using electronic data interchange (EDI). All discharges shall be reported using the same file and record formats specified in §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes) regardless of the medium of transmission. Record length is 192 characters for all records. The Council shall document instructions for filing discharge reports by EDI and shall make this documentation available to hospitals at no charge and to the public for the cost of reproduction. The Council shall notify hospitals and their designated agents directly in writing at least 90 days in advance of any change in instructions for filing discharge reports by EDI. The Council's instructions shall follow Department of Information Resources standards for EDI.

(c) Paper Forms: Only hospitals granted an exemption from electronic filing of discharge reports may file discharge reports using paper UB-92 billing forms. Hospitals using paper forms are required to provide all data elements specified in §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes).

(1) All UB-92 forms filed shall be on the form currently approved by the federal Health Care Finance Administration. Photocopies are not acceptable.

(2) Hospitals shall submit no more than one batch of paper forms per submission, with the following external identification affixed as listed in subparagraphs (A)-(E) of this paragraph:

(A) hospital name;

(B) facility identifier;

(C) reporting period for discharges;

(D) number of forms; and

(E) the description: "DISCHARGE DATA".

(3) In addition to the provisions of this section, the Council shall document instructions for filing paper UB-92 forms and shall make this documentation available to hospitals at no charge and to the public for the cost of reproduction. The Council shall notify hospitals or their designated agents at least 90 days in advance of any change in instructions for filing paper forms.

§1301.15. Exemptions from Filing Requirements.

(a) Types of Exemptions.

(1) Exemption as a Rural Provider. All hospitals except those owned by the federal government shall submit discharge reports to the Council unless the Council determines that the hospital is a rural provider. The executive director shall make a determination of which hospitals are entitled to this exemption at least annually and shall notify qualifying hospitals by publication in the *Texas Register* and by regular United States mail. Hospitals which are not initially given an exemption may apply for an exemption. This exemption, if granted, may be revoked by the Council should the hospital cease to meet the criteria for exemption based upon the most current data issued by the United States Bureau of the Census. Hospitals that cease to be exempted as rural providers shall be responsible for submitting discharge files on all discharges that occur 30 days after notice is given. The initial discharge report shall not be due until 90 days after notice is given. Subsequent discharge reports are due as specified in §1301.13(a) of this title (relating to Schedule for Filing Discharge Reports).

(2) Exemptions from Quarterly Filing of Discharge Reports. Hospitals that wish to submit discharge reports to the Council more often than quarterly may do so by requesting an exemption to the standard submission schedule. The Council may also issue general exemptions based on the processing arrangements for data collection. Exemption requests meeting the following criteria as shown in subparagraphs (A)-(D) of this paragraph will normally be approved.

(A) The exemption request includes the specific schedule on which the hospital will make its discharge reports which will usually be daily, weekly or monthly.

(B) The exemption request states the medium in which submissions will be made.

(C) The exemption request will not result in data on any discharge being submitted to the Council at a later date than it would have been if the standard schedule had been followed.

(D) The hospital agrees to adhere to the schedule specified in the exemption request until the hospital notifies the executive director in writing that it wishes to end the exemption and

report according to the standard schedule, or until a new exemption letter is issued.

(3) Exemption from Electronic Filing of Discharge Reports. The Council will grant exemptions from electronic filing of discharge reports only when a hospital can demonstrate that it lacks electronic data processing capacity. If granted, the exemption is valid for one year and must be renewed annually by the hospital. The exemption from electronic filing of discharge reports does not change the data the hospital is required to file on each discharge as specified in §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes), nor the schedule for submission specified in §1301.14 of this title (relating to Instructions for Filing Discharge

until the hospital is able to certify the discharge report as required by §1301.17 of this title (relating to Certification of Discharge Reports).

(d) The executive director will document and the Council will approve all acceptance and editing criteria utilized in reviewing discharge reports. If acceptance and editing criteria are incorporated into computer software, and if the software is the property of the Council, the executive director will make copies of the portions of the software containing the criteria available on paper or magnetic media. The executive director shall make this information available to submitters without charge and to others for the cost of reproduction.

(e) Failure to correct a discharge report which has been filed but contains errors or omissions within the due dates in §1301.13 of this title (relating to Schedule for Filing Discharge Reports) is punishable by a civil penalty pursuant to Health and Safety Code, §108.014.

§1301.17. Certification of Discharge Reports.

(a) Within 120 days after the end of each reporting quarter the executive director shall compile an electronic data file for each reporting hospital using all discharge files received from each hospital. The file shall have one record for each patient discharged during the reporting quarter and one record for any patient discharged during a previous reporting quarter for whom additional discharge files have been received. This file will include all data submitted by the hospital which the executive director intends to use in the creation of the public use data file. The data file will provide physicians and other health professionals the opportunity to review, request correction of, and comment on records of patients for whom they are shown as admitting or treating. The executive director shall determine the format and medium in which the quarterly file will be delivered to hospitals.

(b) The chief executive officer of each hospital shall certify that the discharge report for each quarter is accurate using forms supplied by the Council. The certification form may be signed by a person designated by the chief executive officer and acting as the officer's agent. Designation of an agent does not relieve the chief executive officer of personal responsibility for the certification. If the chief executive officer does not believe the quarterly file is accurate, the officer shall provide the executive director with detailed comments and data necessary to correct any inaccuracy and certify the file subject to those corrections being made.

(c) The certification shall represent that a complete review of hospital records was accomplished to assure the accuracy of the discharge report and any corrections submitted, that all errors and omissions known to the hospital have been corrected, and that to the best of their knowledge and belief, the data submitted is accurate and complete. The certification shall also represent that the hospital has provided physicians and other health professionals on its medical staff a reasonable opportunity to review the discharge files for which they were the admitting or treating physician or other health professional prior to certification, have corrected any errors brought to the hospital's attention and have included with the discharge report any comments on the accuracy of the data submitted by physicians or other health professionals. Written explanation of any unresolved disagreements with the executive director concerning the accuracy and completeness of the data at the time of the certification shall be attached to the certification form.

(d) Each hospital must file its certification of each quarter's data with the Council within six months following the last day of the reporting quarter. Extensions to this period will not be granted.

(e) Failure to timely file a certification of discharge data previously submitted is punishable by a civil penalty pursuant to Health and Safety Code, §108.014.

§1301.18. Hospital Discharge Data Release.

(a) Council records are public records under Government Code, Chapter 552, except as specifically exempted by Health and Safety Code, §108.010 and §108.013, and are available for public inspection during normal business hours. Copies of such records may be obtained upon request and upon payment of user fees established by the Council. Discharge files in the original format as submitted to the Council are exempt from disclosure pursuant to Health and Safety Code, §108.010 and §108.013, and shall not be released. Likewise, patient specific data collected by the Council through audits of hospital data shall not be released.

(b) Creation of public use data file. The executive director will create a public use data file by creating a single record for each inpatient discharge and adding, modifying or deleting data elements in the following manner as listed in paragraphs (1)-(10) of this subsection:

(1) convert patient birth date to age;

(2) convert admission and discharge dates to a length of stay measured in days and a code for the day of the week of the admission;

(3) convert procedure and occurrence dates to day of stay values;

(4) delete physician and other health professional names and numbers: assign uniform identifiers;

(5) convert payer names and identification numbers to uniform payer identifiers: assign codes indicating the primary source of payment;

(6) convert employer name and address data to a Standard Industrial Classification Code;

(7) convert facility name, address and identification numbers to a facility identifier;

(8) convert all procedure codes to ICD-9-CM;

(9) add risk and severity adjustment scores utilizing an algorithm approved by the Council;

(10) add indicators of whether the hospital is a children's specialty hospital and whether the hospital is a teaching hospital.

(c) Release of files and statistical compilations based on the public use data file. The Council shall promptly provide data to those requesting it, subject to restrictions imposed by Health and Safety Code, §108.010 and §108.013 as interpreted by the Council's rules.

(1) The executive director will make available a public use data file on magnetic media for each quarter not later than seven months after the end of the quarter.

(A) The executive director shall release public use data from hospitals that have certified the data as required by §1301.17 of this title (relating to Certification of Discharge Reports). A hospital's failure to execute the certification form after six months

shall not prevent the executive director from releasing the hospital's data if the director believes the data submitted is reasonably accurate and complete. The executive director shall not include in the public use data file records derived from hospital discharge files which contain material errors. The executive director will include with the public use data file information on the number of discharge files received from each hospital and the number of discharge files from each hospital included on the public use data file.

(B) If additional discharge files become available after the initial release of the public use data file for any quarter, the executive director will add these records to the public use data file and make the additional records available to the public.

(C) The other sections of these rules not withstanding, the executive director shall not create a public use data file from the discharge reports covering discharges occurring in the first quarter of 1998. It is the intent of the Council to utilize this data only for testing and calibration of its data processing systems and to allow hospitals the opportunity to test and calibrate their own data reporting systems.

(D) The other sections of these rules not withstanding, the executive director shall not create or release a public use data file from discharge reports covering discharges for the second quarter of 1998 until a public use data file covering discharges for the third quarter of 1998 is created and released. The Council will initially release six months of data in order to provide a more reliable body of data for analysis and decision-making and to make available public use data files on a quarterly schedule thereafter.

(2) The Council shall not charge Texas state agencies a fee for data requested solely for the internal use of the agency to comply with Health and Safety Code, §108.012(b). Prior to filling the request of a state agency without fee, the executive director shall secure an interagency agreement imposing restrictions on distribution, republication or reuse of the data in ways that would diminish user fees to the Council.

(3) The executive director shall establish procedures for screening all requests to assure that filling the request will not violate the provisions of Health and Safety Code, §108.013(c).

(d) The data elements specified for discharge reports in §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes) do not constitute "Provider Quality Data" as discussed in Health and Safety Code, §108.010. Statistical compilations compiled from public use data files may be released with or without either discharge-specific or aggregate provider quality data. Statistical compilations without provider quality data are not subject to the restrictions imposed on the Council by Health and Safety Code, §108.010. Public use data files and statistical compilations compiled from public use data files with provider quality data may only be released subject to the restrictions in Health and Safety Code, §108.010, and rules adopted by the Council to implement this section of the statute.

(e) A public use data file or a statistical compilation compiled from public use data files which is specified by the requestor shall not be considered a "report issued by the Council" as referenced in Health and Safety Code, §108.011(f).

(f) Requests for data files and statistical compilations based on public use data files including data on one or more provider are matters of public record and copies of all requests shall be maintained by the Council for two years from the date of receipt. The executive director will transmit monthly a summary of all requests received to all hospitals submitting discharge data to comply with Health and Safety Code, §108.011(e).

(g) With any public use data file or any statistical compilation prepared by the Council, the executive director shall attach all comments submitted by providers which relate to any data included in the file or compilation.

§1301.19. Discharge Reports-Records, Data Fields and Codes.

(a) Discharge reports shall be submitted electronically in the national standard flat file format for inpatient hospital bills defined by the United States Department of Health and Human Services, Health Care Finance Administration (HCFA); commonly known as the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0). HCFA updates this format from time to time by issuing new versions. The Council will accept discharge reports in the latest version or in the immediately preceding version. At the effective date of these rules, the latest version was version 004.1 and the immediately preceding version was version 004.0. The Council will make detailed specifications for these formats available to submitters and to the public.

(b) Except as otherwise provided in this section, discharge reports shall be submitted using the national uniform billing data element specifications as developed by the National Uniform Billing Committee (NUBC) as published by the State Uniform Billing Committee (SUBC) with instructions specific to Texas third party fiscal intermediaries in the Texas UB-92 Manual. The NUBC revises these data element specifications from time to time and the SUBC publishes revisions showing the effective date for changes to each data element. Hospitals shall submit discharge reports using the data element specifications in effect as of the date of the discharge. The Council will make detailed specifications for these data elements available to submitters and to the public.

(c) In addition to the data elements contained in the Texas UB-92 Manual, the Council has defined the following data elements shown is in this subsection and has defined the location in the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) where each element is to be reported.

(1) Source of Payment Code-This data element shall be reported at Record 30, Field 04, Beginning Position 25 as an alphanumeric value. Acceptable codes are:

_ = Charity/Self pay
_ = Workmen's Compensation
_ = Medicare
_ = Medicaid
_ = Other Federal Programs (includes Veterans Administration)
_ = Commercial
_ = Blue Cross
_ = Champus
_ = Other
_ = State or Local Government Programs
_ = Commercial PPO
_ = Medicare Managed Care
_ = Medicaid Managed Care
_ = Commercial HMO

(2) Submission Purpose Code-This data element shall be reported at Record 01, Field 20.8, Beginning Position 183 As an alphanumeric value. Acceptable codes are C = Claim, D = Discharge

Statement, and B = Both. This code is required if a hospital bill clearinghouse is utilized in the data collection effort.

(d) Data may be numeric or alphanumeric. All numeric data shall be right justified and zero-filled. All alphanumeric data shall be left justified. The length of all records is 192 characters. Conditional data fields shall be filled with spaces when other data is not present.

(e) Hospitals shall submit the required minimum data set for all patients for which a discharge file is required by this title. For patients with any form of insurance, hospitals shall submit to the Council all data elements submitted to any third party payer in addition to data elements in the required minimum data set. The required minimum data set includes the following data elements as listed in paragraphs (1)-(40) of this subsection:

(1) Patient control number;

(2) Patient last name;

(3) Patient first name;

(4) Patient middle initial;

(5) Patient sex;

(6) Patient birth date;

(7) Type of admission;

(8) Source of admission;

(9) Source of Payment Code;

(10) Patient city;

(11) Patient state;

(12) Patient zip;

(13) Admission/start of care date;

(14) Statement covers period from;

(15) Statement covers period through;

(16) Patient status;

(17) Medical record number;

(18) Type of bill;

(19) Accommodations revenue codes (all applicable);

(20) Accommodations rates (all applicable);

(21) Accommodation days (all applicable);

(22) Accommodation total charges (all applicable);

(23) Inpatient ancillary revenue code (all applicable);

(24) Units of service (all applicable);

(25) Ancillary charges total (all applicable);

(26) Principal diagnosis code;

(27) Other diagnosis codes (all applicable);

(28) Principal surgical procedure code (if applicable);

(29) Principal surgical procedure date (if applicable);

(30) Other surgical procedure codes (all applicable);

(31) Other surgical procedure dates (all applicable);

(32) Admitting diagnosis;

(33) External cause of injury (if applicable);

(34) Procedure coding method used;

(35) Attending physician number;

(36) Operating or other physician number (if applicable);

(37) Other physician number (all applicable);

(38) Attending physician name;

(39) Operating or other physician name (if applicable);

(40) Other physician name (all applicable);

(f) A submission will consist of a set of the following types of records from the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) specification as shown in paragraphs (1)-(13) of this subsection.

(1) Processor Label Data (Record 01). Files will be formatted so that this is a data record, not a conventional label. From a system standpoint, this will be a "labelless" file. This record will be the first record in the file.

(2) Provider Data (Record 10). The provider's batch record describes the types of claims submitted for a specific provider. Field 02 of this record identifies the specific type of claim. A provider may be authorized to submit more than one claim type. In that case, more than one batch will be required to identify each claim type. Each claim in the batch will be edited for claim type. Record 40, Field 04 identifies claim type and will be matched to the batch record for claim type. Each batch record must be followed by claim records and then Provider Batch Control Record (Record 95). This record is required at the beginning of each batch.

(3) Patient Data (Record 20). The patient record is the first record of a claim. It is required for all claim types as it contains the patient's demographic data.

(4) Third Party Payer Data (Record 30). The third party payer record identifies the insurance information for each payer. If the patient has other insurance, two or more records must be submitted, one for each carrier. If the patient has no third party payer, submit one Record 30 with Field 04 = A. NOTE: Records must be in the correct payer priority sequence. The '01' Record determines which source payment code will be considered as primary.

(5) Claim Data (Record 40). The claim data record identifies miscellaneous data needed to process a claim.

(6) Claim Data Conditions and Values (Record 41). This record is used to report condition and value codes. If none are needed, this record is not necessary.

(7) Inpatient Accommodations (Record 50). This record identifies the room charges (revenue codes 100-219) for an inpatient claim.

(8) Inpatient Ancillary Services (Record 60). This record identifies the inpatient ancillary services (revenue codes 220-999). Revenue code '001' (total) is required for all lines of business. It must be the last revenue code listed and must contain the correct totals.

(9) Medical Data (Record 70). This record identifies the diagnosis and surgical procedure code requirements.

(10) Physician Data (Record 80). This record is for the physician license number and name.

(11) Discharge Totals (Record 90). This record is the final record for each discharge and is required for all discharge types. The record count and charges associated with the discharges will be edited to this record. The discharge will be rejected when the counts or totals do not agree to those accumulated while processing the individual records of each discharge. If a record is not submitted for a discharge, enter '0' for that record count.

(12) Provider Batch Control (Record 95). The provider's batch control record contains information for all the claims of a specific claim type. The system will accumulate totals as it processes each claim. The totals are then edited to the batch totals record. When the totals are out of balance, the batch will be rejected.

(13) File Control Totals (Record 99). The processor's file control record contains control information for all the claims in the file.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 30, 1997.

TRD-9709885
Jim Loyd
Director of Program Planning
Texas Health Care Information Council
Effective date: August 19, 1997
Proposal publication date: February 11, 1997
For further information, please call: (512) 424–6492

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

34 TAC §3.294

The Comptroller of Public Accounts adopts an amendment to §3.294, concerning the rental and lease of tangible personal property, with changes to the proposed text as published in the March 25, 1997, issue of the *Texas Register* (22 TexReg 3030).

The Tax Code, §151.006 and §151.152, was amended by Senate Bill 982, 74th Legislature, 1995, effective September 1, 1995, to exempt sales for resale in Mexico. The amendment provides information concerning the acceptance of valid and properly completed resale certificates from Mexican retailers. The amendment also clarifies policy regarding the sale for resale exemption under Tax Code, Chapter 151, for accessories and equipment attached to motor vehicles that are held for sale, lease, or rental.

In addition, a change was made to the proposed text of subsection (c)(3)(B) to correct the reference to subsection (i). The correct reference is to subsection (j) of this section.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §§151.006, 151.152, and 151.302.

§3.294. Rental and Lease of Tangible Personal Property.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Financing lease.

(A) A written lease contract containing either of the following provisions or conditions at the inception of the contract:

(i) title to the property must be transferred to the lessee at the end of the lease; or

(ii) an option to purchase the property at a nominal price is available to the lessee at the end of the lease (a price is nominal which is, at the time the contract is executed, estimated to be less than 10% of the fair market value of the property at the time the option is to be exercised).

(B) A written lease contract containing either of the following provisions or conditions at the inception of the contract will be presumed to be a financing lease:

(i) the lease term is equal to 75% or more of the estimated economic life of the property and the contract makes no provisions for the return of the property to the lessor. For used property, this section does not apply if the beginning of the lease term falls within the last 25% of the total estimated economic life of the lease property; or

(ii) the residual value of the leased property is less than 10% of the property's fair market value at the inception of the lease and the contract makes no provisions for the return of the property to the lessor.

(C) The presumption outlined in subparagraph (B) of this paragraph that the contract is a financing lease may be rebutted by showing that the contract is not merely a security device, that the property will be usable for its intended purpose at the end of the lease term, and that the lessor in good faith intends to reclaim possession of the property at the end of the lease term or to sell the property at the fair market value or to lease it for its fair market rental value.

(2) Lease or rental - A transaction, by whatever name called, in which possession but not title to tangible personal property is transferred for a consideration. In this section, the words lease and rental are used interchangeably.

(3) Operator - A person who actively guides, drives, pilots, or steers tangible personal property. A person who provides maintenance, repair, or supervision only is not an operator for the purposes of this section.

(4) Operating lease - A lease contract which gives the lessee use of the leased property for a certain period. For the purposes of the sales and use taxes, a written contract in the legal form of a

lease will be treated as an operating lease unless it meets the definition of a financing lease. All oral leases will be treated as operating leases.

(b) Leases. Tax must be collected from the lessee on all charges contained in the lease unless the charge is separately stated and is nontaxable as provided by this section. See subsection (f) of this section for imposition of tax and time for reporting.

(c) Tangible personal property leased with and without an operator.

(1) Receipts from the lease of tangible personal property without an operator are taxable.

(2) The furnishing of tangible personal property with an operator for which a single charge is made to the customer shall be presumed to be the performance of a service and no tax may be charged to the customer, unless the service is taxable under other provisions of the Tax Code, Chapter 151. Sales or use taxes will be due on the original purchase price of the tangible personal property.

(A) The presumption set forth in subsection (c)(2) of this section may not be rebutted solely by one party to the transaction. The presumption may be rebutted by the following criteria which establish a lease of tangible personal property:

(i) the customer exercised direct control or supervision over the operator of the tangible personal property; and

(ii) the intent of the agreement was to lease a piece of tangible personal property and separately furnish an operator.

(B) If it is established that a lessor who made a single charge to customers did in fact make a lease of tangible personal property, the tax will be due on the fair market rental value of the tangible personal property. If this cannot be determined, the tax will be due on the total charge reduced by the charge attributable to the operator determined from lessor's records. If the charge for the operator cannot be determined from the lessor's records or if it seems unreasonable, the comptroller will make a determination of a reasonable operator charge.

(3) A transaction in which tangible personal property is furnished with an operator, and the customer is charged separately for tangible personal property and operator, shall be presumed to be the lease of tangible personal property and the separate furnishing of an operator; the receipts from the separate charge for the tangible personal property are taxable. The separate charge for the operator will not be taxable unless a taxable service is being provided.

(A) If a nontaxable service is being provided and it is established that the separate charge for the lease of tangible personal property is lower than the tangible personal property's fair market rental value, sales tax will be assessed on the fair market rental value unless the lessor presents convincing evidence to the comptroller as to why the rental charge should be lower than fair market rental value.

(B) If it is established that a lessor who separated charges for tangible personal property and operator nevertheless used the tangible personal property to perform a service, sales tax will be assessed on the fair market rental value if the property was purchased under a valid resale certificate. See subsection (j) of this section.

(d) Other charges related to lease agreements. Operating and financing lease agreements and related billings may contain a variety of charges in addition to the basic rental/lease charges, including charges that occur subsequent to the rental. All charges related to a lease agreement are taxable unless excluded from tax by this section. Some of these charges and their tax consequences are as follows.

(1) Separately stated charges for labor or services rendered in installing, applying, remodeling, servicing, maintaining, or repairing the item being leased are subject to tax.

(2) Damage waiver fees are subject to tax. A charge after the rental for repair to the damaged rental item is subject to tax as a taxable service. See §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property). Charges for items destroyed or lost by a lessee are not taxable. However, if a lessee is required to purchase an item damaged by the lessee, the charge for the damaged item is taxable.

(3) All transportation charges billed by the lessor to the lessee related to the leased property are taxable. Charges for transportation billed directly to the lessee by third-party carriers are not taxable. See §3.303 of this title (relating to Transportation and Delivery Charges).

(4) Charges in the lease agreement for labor, such as charges for supervision, set-up, hook-up, assembly or disassembly, erection, and dismantling, are included in the lease price and are taxable.

(5) A charge imposed for the early termination of the lease is included in the lease price and is taxable.

(6) Under an operating lease, any interest charges will be taxable whether or not separately stated unless the interest charge is clearly imposed for late payment or other defaults under the lease.

(7) Under a financing lease, charges for interest by the lessor to the lessee will be taxable unless the rate of interest or the actual interest charged is separately stated in a contract, invoice, billing, sales slip, or ticket to the customer.

(e) Tangible personal property rented for use on residential and nonresidential jobs.

(1) Persons renting equipment for use in the performance of contracts to construct new nonresidential real property or to construct, repair, or remodel residential real property owe tax to the equipment rental company. Tax may not be collected from their customers on a separately stated charge for this reimbursable expense item even if the equipment charges to the customer are separately stated from operator charges. See §3.291 of this title (relating to Contractors).

(2) Persons renting equipment for use in the performance of contracts to repair or remodel nonresidential real property owe tax to the equipment rental company. Tax must also be collected from their customers on the total charge for the job including the amount paid for the equipment rental.

(3) When both remodeling and new construction are being performed under the same contract, the tax to be collected from customers on the rental charges should be determined as provided by §3.357(b)(7) of this title (relating to Labor Relating to Nonresidential Real Property Repair, Remodeling, Restoration, Maintenance, New Construction, and Residential Property).

(f) Imposition of taxes; time for filing; credits.

(1) Leases subject to sales tax.

(A) An operating lease executed while the property is within the state is subject to sales tax. Tax will be due on the total lease amount for the entire term of the lease regardless of where the property is used if the lessee takes delivery in the state. Any renewal of the contract, extensions, or options exercised while the tangible personal property is outside the state will not be subject to Texas tax unless the property reenters the state.

(B) A financing lease executed while the property is within the state is subject to sales tax if the lessee takes delivery in the state. Tax will be due on the total amount of the contract regardless of where the property received in Texas is used during the lease.

(2) Leases subject to use tax. Property brought or shipped into the state for use under the terms of a financing lease or an operating lease will be presumed to be subject to use tax. See §3.346 of this title (relating to Use Tax). The use tax will be due on the lease price for the entire term of an operating lease regardless of where the initial contract was executed. Credit will be allowed against any sales or use tax legally imposed and paid to another state. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers).

(3) Method and time for filing reports.

(A) Under an operating lease, a lessor must report the rental charges in the period in which they are considered income under the lessor's method of reporting. Under the accrual method of reporting, the rental charges are considered income when the lease amount becomes due under the rental agreement. If the lessor does not collect the tax, the lessee must report the tax in the period in which each lease amount becomes due under the rental agreement.

(B) Under a financing lease, the lessor must collect all tax due under the lease at the time the lessee takes possession of the property or when first payment is due from the lessee, whichever is earlier. Tax must be reported on or before the 20th day of the month following the reporting period in which the tax is collected. If the lessor does not collect the tax, the lessee must report the tax due when the lessee takes possession of the property or when first payment is due, whichever is earlier.

(C) An out-of-state lessor deriving rental receipts from tangible personal property located in Texas is engaged in business in Texas and is required to collect Texas use tax. Under an operating lease, the use tax must be reported by the lessee if the lessor fails to collect it. The tax must be reported by the lessee based upon the lessee's accounting method used for regular books and records. Under a financing lease, the use tax must be reported by the lessee when the lessee takes possession of the property or when the first payment is due, whichever is earlier.

(g) Sales of leased property under operating leases; credit allowed.

(1) When a lessee buys the property that the lessee was renting under the terms of an operating lease and the lessor allows credit against the sales price for all or part of the lease payments previously made by the lessee on the same property, tax is not due on the amount allowed as credit if the lessor has collected and remitted tax on the prior rental payments. The lessor must collect the tax on the balance of the sales price based on its method of accounting for sales and use tax purposes.

(2) When the lessor sells property to a third party who was not the lessee of that property and allows the third party credit against the sales price for all or part of the lease payments previously made by the former lessee, tax may not be refunded on the amount allowed as credit. The lessor must also collect and report the tax on the sales price of the property to the third party based on its method of accounting for sales and use tax purposes.

(h) Assignment of lease payments under operating leases. A lessor may factor or assign to a third party the lessor's right to receive all lease payments due under the agreement with the lessee. At the time the lease agreement is factored or assigned, tax is due on all lease amounts not yet reported. The lessor is responsible for reporting the tax to the comptroller's department in the report period the lease agreement is assigned or factored. No deduction in the amount of tax due and payable by the lessor is allowed if a transfer at a discount is made to a third party. No tax liability is incurred by the purchaser of the lease agreement. This section does not apply to the pledge of lease contracts by a lessor to a third party as loan collateral under the terms of a bona fide loan agreement.

(i) Assignment of lease payments and property under operating leases. A lessor may assign to a third party the lessor's right to receive all lease payments due under an agreement with the lessee and, in the same transaction, transfer title to the property covered by the lease. At the time the operating lease contract is assigned and title to the property is transferred to the third party, the third party purchaser must begin collecting and remitting tax on the full amount of the taxable rental charges remaining in the lease. The third party purchaser may issue a resale certificate to the lessor as provided by subsection (j) of this section. Tax must be reported by the third party purchaser as provided by subsection (f)(3)(A) of this section.

(j) Sales for resale; resale certificates.

(1) The purchaser of property which is to be held for lease within the United States of America, its territories and possessions, or within the United Mexican States may issue a resale certificate in lieu of the sales or use tax at the time of purchase. Mexican retailers who purchase for resale must show their Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of their Mexican Registration Form to the Texas seller. However, if the lessor subsequently uses the property in any manner other than the leasing of it, or display or demonstration of it, the lessor becomes liable at the time of the use for sales tax based on the fair market rental value for the period of time used. The fair market rental value is the amount that a lessee would pay on the open market to rent the item for use. If the fair market rental value of the property cannot be ascertained, tax is due on the original purchase price of the property.

(2) At any time, the lessor using the property purchased under a resale certificate may stop paying tax on the fair market rental value and instead pay sales tax on the original purchase price. When the lessor elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid on the fair market rental value. See §3.285 of this title (relating to Resale Certificate; Sales for Resale).

(3) A resale certificate may be issued by a retailer for a repair or replacement part, accessory, or equipment that will be attached to a motor vehicle to be rented or leased under the provisions of the Tax Code, Chapter 152. In this paragraph, the terms "rental"

and "lease" are defined by the Tax Code, Chapter 152, rather than by subsection (a)(2) of this section.

(k) Lease of real property with tangible personal property.

(1) If a contract for the lease or rental of real property includes the lease or rental of tangible personal property (such as furniture) as part of the agreement, no sales tax is due on the amount charged the tenant for the lease or rental of the tangible personal property. A resale certificate may not be issued and sales or use tax must be paid at the time the tangible personal property is purchased.

(2) Sales or use tax is due on the separate lease or rental of tangible personal property by a person or entity not owning or managing the real property in which the tangible personal property is or will be situated. A resale certificate may be issued in lieu of paying the tax at the time of purchase of the tangible personal property for subsequent lease or rental.

(l) Other taxes. For information pertaining to tax on motor vehicle rental receipts, refer to sections promulgated under the Motor Vehicle Sales and Use Tax Act.

(m) Local tax. For proper collection and allocation of city and transit sales taxes, see §3.374 of this title (relating to Collection and Allocation of the City Sales Tax) and §3.424 of this title (relating to Collection and Allocation of Transit Sales Tax).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710025
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
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Proposal publication date: March 25, 1997
For further information, please call: (512) 463-3699

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Management

Subchapter F. Advisory Committees

43 TAC §§1.82, 1.83, 1.85

The Texas Department of Transportation adopts amendments to §1.82, §1.83, and §1.85, concerning statutory and department advisory committees. Section 1.85 is adopted with changes to the proposed text as published in the June 10, 1997, issue of the *Texas Register* (21 TexReg 5657). Section 1.82 and section 1.83 are adopted without changes and will not be republished.

Texas Civil Statutes, Article 6252-33, provides that a state agency which is advised by an advisory committee shall adopt rules that state the purpose of the committee and describe the task of the committee and the manner in which the committee will report to the agency. Texas Civil Statutes, Article 6252-33, further provides that a state agency shall establish by rule a date on which the committee will automatically be abolished unless the governing body of the agency affirmatively votes to continue the committee in existence.

House Bill 1418, 75th Legislature, 1997, requires the creation of a Household Goods Carrier Advisory Committee to provide a forum for household goods carriers and the general public to make recommendations on modernizing and streamlining the rules to effect an efficient registration process for businesses and individuals, conduct a study of the feasibility and necessity of requiring any vehicle liability insurance for household goods carriers required to register under Texas Civil Statutes, Article 6675c, §8, and recommend a maximum level of liability for loss or damage of motor carriers.

In accordance with House Bill 1418, amendments to §1.82 and §1.83 are proposed to create the Household Goods Carrier Advisory Committee.

Section 1.83 and §1.85 presently mandate that the department's statutory and department advisory committees shall be abolished on September 1, 1997, unless continued in existence by affirmative vote of the commission. These sections are amended to reflect the department advisory committees will continue in existence until September 1, 1999, and the statutory advisory committees will continue until September 1, 2001.

The amendments to §1.83 authorize the Public Transportation Committee to create issue subcommittees and continue the following statutory advisory committees: Aviation Advisory Committee, Public Transportation Advisory Committee, and Vehicle Storage Facility/Tow Truck Rules Advisory Committee.

To comply with Texas Civil Statutes, Article 6252-33, §1.85 has various proposed amendments. One proposed amendment to §1.85 abolishes the Registration and Title System Liaison Committee and Dealer Advisory Board, County Tax Assessor-Collector Review Team, El Paso District Citizen's Advisory Committee, Hydraulics and Erosion Control Laboratory Industry Advisory Committee, Transportation Systems Efficiency Advisory Committee, and Transit Operators' Advisory Committee because these committees have fulfilled their mission. The amendment also abolishes the Consultant Engineering Advisory Committee, Quality Control/Quality Assurance Specification Development Committee, and the Quality Control/Quality Assurance Certification Advisory Committee because these committees merely exchange information and do not advise the department.

Another amendment to §1.85 changes the names of the Tow Truck Rules Advisory Committee to the Vehicle Storage Facility/ Tow Truck Rules Advisory Committee, the Local Intelligent Vehicle Highway Systems (IVHS) Steering Committee to Intelligent Transportation Systems Steering Committee, and the Safety Management System to the Partners in Texas Transportation Safety Committee to more accurately reflect the tasks of the committees.

An additional amendment to §1.85 also continues the Bicycle Advisory Committee, Intelligent Transportation Systems Committee, Motor Transportation Advisory Committee, Partners in

Texas Transportation Safety Committee, Statewide Transportation Policy Committee, and Traffic Records Council.

The amendments were published in the June 10, 1997, issue of the Texas Register (22 TexReg 5657) and comments were received from the Comptroller of Public Accounts, Central Transportation Systems, and Southwest Movers Association.

Central Transportation Systems, and Southwest Movers Association suggested that due to the size of the industry, the Household Goods Carriers Committee created by §1.82(b)(2) should not be limited to three carrier members. They recommended that the advisory committee be composed of three household goods motor carriers for each of the equipment size categories.

Texas Civil Statutes, Article 6252-33, provides that an advisory committee must be composed of a reasonable number of members not to exceed 24 members. The committee must also have a balanced representation between the industry regulated and the consumers of services of that industry. To add six additional motor carriers to the committee would necessitate an increase in the numbers of consumers on the committee as well. It would be difficult to coordinate meetings and actions for a committee that large. If, at a future date, the department determines that more input is necessary, it will consider adding additional members. Therefore, no changes will be made concerning this comment.

The Comptroller of Public Accounts commented on §1.85(a)(2)(E) and (8)(E), concerning the reimbursement of expenses for the Statewide Transportation Policy Committee and the Bicycle Advisory Committee.

The commenter questioned whether the members of the Statewide Transportation Policy Committee are entitled to receive travel expenses. Since the General Appropriations Act for fiscal years 1998 and 1999 did not specifically authorize reimbursement for this committee, the department has deleted the reimbursement provision from 1.85(a)(2)(E).

The commenter also stated that it was unaware of any statute that authorized the department to establish and continue the Bicycle Advisory Committee. In addition to authority under Transportation Code, §201.101, §201.103, and §201.601, Transportation Code §202.902 mandates that the commission adopt bicycle rules. The rules must include the specific duties of a statewide bicycle coordinator. One of the bicycle coordinator's duties is to obtain comments from bicyclists on department policies affecting bicycle use of state highways. The commission has created the committee under the broad authority of this statute to obtain those comments. The legislature has recognized the legitimacy of the committee by appropriating funds for its expenses in Article VII, §32 of the General Appropriations Act, 74th Legislature, 1997.

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Texas Civil Statutes, Article 6252-33 which requires a state agency to adopt rules that state the purpose and task of the committees.

§1.85. Department Advisory Committees.

(a) Creation.

(1) Project advisory committees.

(A) Purpose. The executive director may authorize a district engineer to create, by written order, an ad hoc project advisory committee composed of the following members as may be deemed appropriate by the district engineer: department staff; affected property owners and business establishments; technical experts; professional consultants representing the department; and representatives of local governmental entities, the general public, chambers of commerce, and the environmental community. A project advisory committee shall serve the purpose of facilitating, evaluating, and achieving support and consensus from the affected community and governmental entities in the initial stages of a highway improvement project. Advice and recommendations of a committee provide the department with an enhanced understanding of public, business, and private concerns about a project from the development phase through the implementation phase, thus facilitating the department's communications and traffic management objectives, resulting in a greater cooperation between the department and all affected parties during project development and construction.

(B) Duties. A project advisory committee shall:

(i) maintain community and local government communication; and

(ii) respond in a timely fashion to affected parties' concerns about project development and construction.

(C) Manner of reporting. A project advisory committee shall report its advice and recommendations to the district engineer.

(D) Duration. A project advisory committee may be abolished at any stage of project development, but in no event may a committee continue beyond completion of the project.

(2) Statewide Transportation Policy Committee.

(A) Purpose. Transportation Code, §201.601, and 23 United States Code §135 require the department to develop a statewide multimodal transportation plan that encompasses all modes of transportation. Federal law further provides that in developing the plan the department must seek public input from interested parties. To comply with these requirements, the Statewide Transportation Policy Committee, to be composed of private transportation providers and other governmental agencies and individuals concerned with transportation, will advise the department on its statewide transportation plan. The committee will provide a forum for identifying issues to be addressed by the planning process and for providing input into the department's planning process. The committee members represent a constituency of interests and in this way broaden input into the planning process.

(B) Duties. The committee shall:

(i) review and comment on issue papers prepared as part of developing recommended goals for Texas' transportation system;

(ii) review and comment on the draft statewide transportation plan;

(iii) have its members serve as chairs of issue committees to develop and explore issues that pertain to the statewide transportation planning process; and

(iv) provide logistical assistance such as furnishing data and existing planning materials.

(C) Manner of reporting. The committee shall report its advice and recommendations to the commission.

(D) Statewide transportation policy issue committees.

(i) The Statewide Transportation Policy Committee may appoint one or more issue committees to advise it on specific planning issues, such as environmental, intermodal, financial, and special transportation needs.

(ii) An issue committee shall report its advice and recommendations to the Statewide Transportation Policy Committee.

(3) Ad hoc transit advisory panels.

(A) Purpose. In order to provide for effective and timely input from affected public transportation providers and riders, the commission, by minute order, may create an ad hoc transit advisory panel.

(B) Duties. An ad hoc advisory panel shall advise the Public Transportation Division on a single issue or program that only affects a specific segment of the public transportation industry or of the public. An example of an ad hoc panel would be a committee created to advise the division on the funding allocation rules for a particular grant program.

(C) Manner of reporting. An ad hoc advisory panel shall report its advice and recommendations to the Public Transportation Division director.

(D) Duration. An ad hoc advisory panel shall be abolished no later than 90 days after its creation.

(4) Rulemaking advisory committees.

(A) Purpose. The commission, by order, may create ad hoc rulemaking advisory committees pursuant to the Government Code, Chapter 2001, §2001.031, for the purpose of receiving advice from experts, interested persons, or the general public with respect to contemplated rulemaking.

(B) Duties. A rulemaking advisory committee shall provide advice and recommendations with respect to a specific contemplated rulemaking.

(C) Manner of reporting. A rulemaking advisory committee shall report its advice and recommendations to the division responsible for the development of the rules.

(D) Duration. A rulemaking committee shall be abolished upon final adoption of rules by the commission.

(5) Traffic Records Council (TRC).

(A) Purpose. The TRC coordinates and guides the planning and implementation of various Texas traffic records systems. The overall goal of the TRC is to share information regarding the various state data bases related to traffic records, establish a mutual understanding of the overall state goal of increasing the safety and efficiency of the roadway system, and to develop strategies for continued cooperation among all state and local participants with an interest in the traffic records process.

(B) Duties. The TRC shall:

(i) assist the department in the coordination and guidance of the planning and implementation of the various Texas traffic records systems to improve information quality and quantity;

(ii) provide recommendations concerning the implementation of a strategic plan for the improvement of the state's record systems;

(iii) help transfer related information on technology and systems through meetings and forums; and

(iv) provide recommendations to the various agencies on system enhancements and linkages.

(C) Manner of reporting. The TRC shall report its advice and recommendations to the various participating agencies, including the department and its Traffic Operations Division.

(6) Intelligent Transportation Systems (ITS) Steering Committees.

(A) Purpose. Federal law encourages the expenditure of federal transportation funds to achieve improvements in the efficiency of transportation operations. A portion of these funds are specifically designated for the planning and testing of Intelligent Transportation Systems technologies. As part of the development and implementation of these projects, a district engineer, in conjunction with local officials, may create a steering committee to provide support for ITS activities. Advice and recommendations expressed by a committee will foster the coordination of state and local benefit in the design, maintenance, and operation of ITS facilities.

(B) Duties. A committee shall provide advice and recommendations with respect to:

(i) ITS project priorities;

(ii) the approval of projects;

(iii) seeking project funding;

(iv) coordinating public and private ventures; and

(v) promoting ITS at local, state, and national levels.

(C) Manner of reporting. A committee shall report its advice and recommendations to the local district engineer, or his or her designee.

(7) Motor Transportation Advisory Committee.

(A) Purpose. The Motor Transportation Advisory Committee provides a forum for communication among state agencies, the trucking industry, motor bus companies that do not operate wholly within the limits of any incorporated town or city and its suburbs, and the affected public in a cooperative effort to seek solutions to common problems, and to support the department's mission to work cooperatively to provide safe, effective, and efficient movement of people and goods.

(B) Duties. The Motor Transportation Advisory Committee shall provide advice with respect to:

(i) the issuance of permits for the movement of oversize and overweight vehicles and loads;

(ii) the registration of trucks and motor buses;

(iii) future truck and motor bus equipment and highway needs;

(iv) coordination of regulatory and enforcement activities of state agencies affecting the trucking and motor bus industries.

(v) truck and motor bus safety;

(vi) opportunities for one-stop shopping for state services and requirements of trucks and motor bus companies; and

(vii) other issues concerning the department and the trucking and motor bus industries.

(C) Manner of reporting. The committee shall report its advice and recommendations to the assistant executive director for motorist services and the assistant executive director for multimodal transportation.

(8) Bicycle Advisory Committee.

(A) Purpose. The purpose of the Bicycle Advisory Committee is to advise the commission on bicycle issues. By involving representatives of the public, including bicyclists, the department helps ensure effective communication with the bicycle community, and that the bicyclist's perspective will be considered in the development of departmental policies affecting bicycle use including, the design, construction and maintenance of highways.

(B) Duties. The committee shall review and make recommendations on items of mutual concern between the department and the bicycling community.

(C) Manner of reporting. The committee shall report its advice and recommendations to the commission.

(D) Creation. The effective date for establishment of the bicycle advisory committee will be the same date that the Bicycle Rules Advisory Committee is abolished.

(E) Reimbursement. The department may reimburse a member of the Bicycle Advisory Committee for reasonable and necessary travel expenses. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement of expenses for advisory committee members.

(9) Partners in Texas Transportation Safety Committee.

(A) Purpose. The Partners in Texas Transportation Safety Committee provides advice and makes recommendations to improve transportation safety by identifying and evaluating safety issues for consideration in transportation strategies, plans, and projects.

(B) Duties. The committee shall:

(i) develop and recommend safety goals and objectives for the state through consideration of current transportation trends;

(ii) identify and recommend safety policies, procedures, and processes which affect safety-related decisions; and

(iii) coordinate and communicate transportation issues with other agencies and individuals to ensure a functional and productive safety management system.

(C) Subcommittees.

(i) The committee may appoint subcommittees to work independently on select safety issues.

(ii) A subcommittee shall report its finding or recommendation to the committee chair.

(D) Manner of reporting. The committee shall report its advice and recommendations to the participating agencies and the Director of Traffic Operations.

(E) Duration. The committee is abolished September 1, 1999, unless continued in existence by affirmative vote of the commission.

(b) Operating procedures.

(1) Membership. An advisory committee shall be composed of not more than 24 members to be appointed by the office or official to whom the committee is to report. When applicable to the purpose and duties of the committee, the membership shall provide a balanced representation between:

(A) industries or occupations regulated or directly affected by the department; and

(B) consumers of services provided either by the department or by industries or occupations regulated by the department.

(2) Meetings.

(A) An advisory committee shall meet once a calendar year and such other times as requested by the office to which it reports.

(B) A majority of the membership of an advisory committee constitutes a quorum. A committee may take formal action only by majority vote of its membership.

(3) Officers. Each committee shall elect a chair and vice-chair by majority vote of the members of the committee.

(c) Duration. Except as otherwise specified in this subsection, a committee created under this section is abolished September 1, 1999, unless continued in existence by affirmative vote of the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710060
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Effective date: August 25, 1997
Proposal publication date: June 10, 1997
For further information, please call: (512) 463-8630

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OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas State Board of Public Accountancy

Tuesday, August 12, 1997, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Technical Standards Review Committee

AGENDA:

A. Informal Conference:

1. File Number 96–10–03L-9:00 a.m.

B. Investigations:

1. File Number 97–05–08L

2. File Numbers 97–01–17L and 97–01–16L

3. File Number 97–05–07L

4. File Number 96–03–17L

C. Discussion Items:

1. TSR Seminar-Technical Standards

2. File Number 97–01–04L- Proposed Investigation

Contact: J. Randel (Jerry) Hill, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701–3900, (512) 505–5542.
Filed: August 4, 1997, 3:04 p.m.

TRD-9710117

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Wednesday, August 13, 1997, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Behavior Enforcement Committee

AGENDA:

A. Investigations

1. File Number 97–06–08L

2. File Number 97–05–04L

3. File Number 97–06–04L

4. File Numbers 97–05–17L

5. File Number 97–06–03L

6. File Number 97–05–14L

7. File Number 97–06–13L

8. File Number 97–06–05L

9. File Number 97–05–16L

10. File Number 97–03–12L

B. Application for Reinstatement

1. File Number 91–03–011

C. Discussion Items:

1. A. Carlos Berrera-Independence

2. Carol Harrell-Independent

3. Mark A. Kelley- Section 8

4. Donald Stone- Advertising

5. Carey L. Ray- Independence

6. File Number 96–10–20L

7. Wanda Lorenz—Practicing through registered entities

D. Informal Conferences

1. File Number 97–02–12L- 9:00 a.m.

2. File Number 97–02–14L-10:00 a.m.

3. File Number 97–04–13L-11:00 a.m.

4. File Number 97–02–02L-1:00 p.m.

5. File Number 97–01–30L-2:00 p.m.

6. File Number 97–03–10L-3:00 p.m.

Contact: J. Randel (Jerry) Hill, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701–3900, (512) 505–5542.
Filed: August 4, 1997, 3:04 p.m.

TRD-9710118

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Texas Department on Aging

Wednesday, August 13, 1997, 10:00 a.m.

Texas Department of Aging (TDoA), 4900 North Lamar Boulevard, Room 3501

Austin

Board on Aging

AGENDA:

Call to order

Review of Sunset Self-Evaluation Report.

Adjourn

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78751, (512) 424–6840.
Filed: August 4, 1997, 3:02 p.m.

TRD-9710114

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Wednesday, August 13, 1997, 2:00 p.m.

Texas Department of Aging (TDoA), 4900 North Lamar Boulevard, Room 4501

Austin

Audit and Finance Committee

AGENDA:

Call to order. Minutes of May 8, 1997 meeting. Budget report. Request to Legislative Budget Board to exceed the full-time equivalent limitation. FY 1998 Operating Budget/Agency Workplan. FY 1999 Options for Independent Living program awards. FY 1998 Ombudsman program funding distribution. FY 1998 Health Care Financing Administration funding distribution. *Residential Repair* grant awards. Internal Audit of the Texas Department of Aging Area Agency on Aging Close-out and Carryover Process. FY 1998 Internal Audit Plan, Risk Assessment, and Internal Audit Guidelines. Discussion/ratification of peer review of internal audit function. Audit updates-internal and State Auditor. Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78751, (512) 424–6840.
Filed: August 4, 1997, 3:03 p.m.

TRD-9710115

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Thursday, August 14, 1997, 9:30 a.m.

Texas Department of Aging (TDoA), 4900 North Lamar Boulevard, Room 5501

Austin

Board on Aging

AGENDA:

Consider and possibly act on:

Call to order. Minutes of May 8, 1997 meeting. Public Testimony. Chairman's report. Committee assignments. Executive Director's report. Audit and Finance Committee- Budget report; Request to Legislative Budget Board to exceed the full-time equivalent limitation; FY 1998 Operating Budget/Agency Workplan; FY 1997 Options for Independent Living program awards; FY 1998 Ombudsman program funding distribution; FY 1998 Health Care Financing Administration funding distribution; Residential Repair grant awards; Internal Audit of the TDoA Area Agency on Aging Close-out and Carryover Process; FY 1998 Internal Audit Plan, Risk Assessment, and Internal Audit Guidelines; Discussion/ratification of peer review of internal audit function; Audit updates. Citizens Advisory Council (CAC)—report, evaluation and continuation, and revision to Texas Administrative Code. Options for Independent Living Advisory Committee evaluation and continuation. Adoption of census figures to use with funding formulae. Board resolutions. Discussion of Signs of the Times/Sunset Issues. Recommendation on reauthorization of the Older Americans Act. Report on Governor's Conference on Aging. Board member travel. General announcements. Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78751, (512) 424–6840.
Filed: August 4, 1997, 3:08 p.m.

TRD-9710113

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Texas Department of Agriculture

Tuesday, Wednesday, August 12–13, 1997, 1:00 p.m. and 8:00 a.m. respectively

Ambassador Hotel, 3100 H40 West

Amarillo

Texas Wheat Producers Board

AGENDA:

August 12, 1997

Call meeting to order and opening remarks

Action: Year End Financial Report; Year End Audit Report; Minutes of May meeting; 1997 Year to Date Financial Report; Various Budget Amendment Requests; Staff recommended personnel discussion.

Report and Action: Swear in and Seat one re-elected board member, TDA; NAWG Summer Leadership Conference and Board Meeting; USW Board of Directors Meeting.

Report: USW President Search Committee Meeting

Recess

August 13, 1997

Call meeting to order

Report and Action: Wheat Foods Council New Funding Proposal; Past Quarter and Futures Activities Report.

Report: NRCS Meeting on Administration and Funding; Texas A&M Extension Specialist Meeting; Other Board Members Reports and New Business

Adjourn

Contact: Bill Nelson, 2201 Civic Circle, Amarillo, Texas 79109–1853, (806) 352–2191.
Filed: August 4, 1997, 1:46 p.m.

TRD-9710110

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Texas Commission on Alcohol and Drug Abuse (TCADA)

Thursday, August 14, 1997, 10:30 a.m.

1302 South Park, School Board Room, Pecos Independent School District

Pecos

Regional Advisory Consortium, (RAC), Region 9

AGENDA:

Call to order; welcome and introductions of guests; approval of minutes; statewide service delivery plan; old business; new business; public comment/announcements; and adjourn.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753, (512) 349–6669.
Filed: August 4, 1997, 1:36 p.m.

TRD-9710109

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Automobile Theft Prevention Authority

Wednesday, Thursday, August 13–14, 1997, 9:00 a.m. both days

200 East Riverside, Conference Room 101

Austin

Board

AGENDA:

I. Call to Order and Introductions; Approval of Minutes of Previous Meeting.

II. Report on Statewide HEAT Program, Patty Gonzales, Texas Department of Public Safety.

III. Director/Staff Report: Budget, Travel, Grant Analysis and Adjustments, Public Awareness, and Current Events.

IV. Report from Border Solutions Committee by Committee Chairman, Board Member Pat Ayala.

V. Report from Insurance Fraud Committee by Committee Chairman, Board Member Phil Donovan.

VI. Proposed rule defining "motor vehicle" for use in assessing annual fee on insurance companies.

VII. Funding for Fiscal Year 1998, with ATPA Staff Recommendations on Grant Awards and Applicant Responses.

VIII. Public Comment.

IX. Adjourn.

Contact: Agustin (Gus) De La Rosa, 150 East Riverside Drive, Austin, Texas 78704, (512) 416–4605.
Filed: August 4, 1997, 11:41 a.m.

TRD-9710098

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Texas Bond Review Board

Tuesday, August 12, 1997, 10:00 a.m.

Clements Building, Committee Room #5, 300 West 15th Street

Austin

Planning Session

AGENDA:

I. Call to Order

II. Approval of Minutes

III. Consideration of Proposed Issues

A. Texas Department of Housing and Community Affairs-Multifamily Housing Revenue Bonds (FHA-Insured Mortgage Loan-Windcrest Crossing Apartments) Series 1997

B. Texas Alcoholic Beverage Commission-lease purchase of vehicles

C. Texas Alcoholic Beverage Commission-lease purchase of radio equipment

D. General Services Commission-amendment of existing lease with option to purchase agreements for office space

IV. Other Business

A. Texas Department of Housing and Community Affairs-report on status of:

1) Memorandum of understanding related to §501(c)(3) bonds

2) Documents and other information that were to be provided to the Bond Review Board related to the $1,500,000 line of credit for the Texas Affordable Housing Corporation

B. Texas Water Development Board-discussion of future request for amendment to prior approval of State Revolving Fund Senior Lien Revenue Bonds, Program Series 1997

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463–1741.
Filed: August 4, 1997, 3:58 p.m.

TRD-9710129

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Coastal Coordination Council

Wednesday, August 13, 1997, 1:30 p.m.

William B. Clements Building, 300 West 15th, Committee Room 5

Austin

AGENDA:

I. Call to Order;

II. Action Item: Approval of the minutes of the May 14, 1997 meeting.

III. Coastal Management Program (CMP) updates: A. Consistency review report; B. NOAA Cooperative Agreement/CMP Grants Program; C. State Coastal Nonpoint Pollution Control Program: D. Legislative report

IV. Action Item: Approval of continuation of funding for the Permitting Assistance Coordinator position through to Fiscal Year 1998

V. Action Item: Approval of amendment to the Council/Corps maintenance dredging Memorandum of Agreement to allow changes to the order in which projects are reviewed

VI. Action Item: Approval of concept and schedule for development of supplemental project funding plan

VII. Action Item: Proposal of amendments to Chapter 501 and Chapter 503 of the Council rules, removing Liberty County from the CMP boundary

VIII. Discussion of consistency review of federal agency lawsuits

IX. Action Item: Request for Council endorsement from the Bureau of Economic Geology of an update of the project, Sampling and Analysis of the Submerged Lands of Texas

X. Public comment

XI. Adjourn

Contact: Janet Fatheree, 1700 North Congress Avenue, Room 617, Austin, Texas 78701, (512) 463–5385.
Filed: August 4, 1997, 4:53 p.m.

TRD-9710132

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General Services Commission

Thursday, August 14, 1997, 9:30 a.m.

Central Services Building, 1711 San Jacinto, Room 402

Austin

AGENDA:

(I) Call to Order; (II) Staff, Guests, and Members Present; (III) Consideration of the Following Agenda Items: Item 1. Consideration of Resolution Ratifying the Executive Director's Issuance of Notice of Intention to Amend Existing Leases with Option to Purchase, Dated July 31, 1997, and Application for Bond Review Board Approval, Dated August 5, 1997; Authorizing such Additional and Further Acts to Consummate this Transaction; (IV) Adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, also non-English speaking persons who may need assistance are requested to contact Pat Wilder at (512) 463–3446 two working days prior to the meeting so that appropriate arrangements may be made.

Contact: Judy Ponder, 1711 San Jacinto Boulevard, Austin, Texas 78701, (512) 463–3960.
Filed: August 5, 1997, 3:51 p.m.

TRD-9710171

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Texas Department of Health

Thursday, August 14, 1997, 9:30 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

Informal Home and Community Support Services Task Force

AGENDA:

The task force will introduce guests and staff and discuss and possibly act on: 25 Texas Administrative Code (TAC), Chapter 115, rule revisions identified during the July 9, 1997 meeting; draft rule language concerning administrative penalties; draft rule language concerning financial solvency; other business not requiring action; and public comments.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Merrie Duflot, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6647.
Filed: August 6, 1997, 9:49 a.m.

TRD-9710218

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Friday, August 15, 1997, 9:30 a.m.

Moreton Building, Room M-418, Texas Department of Health, 1100 West 49th Street

Austin

Kidney Health Care Advisory Committee

AGENDA:

The committee will meet to discuss and possibly act on: anticipated vacancy on the Texas Diabetes Council; transfer of the Epilepsy Program; status of the budget for fiscal year 1997; appropriations and riders for fiscal years 1998 and 1999; proposed benefits for fiscal years 1998 and 1999; proposed revisions to the reimbursable drug list (Prograf, Precose, Rifampin, Rezulin, Catapres, Nitroglycerin patches, Prilosec (tabled from previous meeting), Sporanox (clarification from previous meeting), and Valtrex (clarification from previous meeting)); and public comment.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Juanita Waley, 1100 West 49th Street, Austin, Texas 78756, (512) 458–7796.
Filed: August 4, 1997, 10:04 a.m.

TRD-9710079

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Friday, August 15, 1997, 1:30 p.m.

Room 102 (Lobby), Texas Department of Insurance, 333 Guadalupe

Austin

Medical Radiologic Technologist Advisory Committee

AGENDA:

The advisory committee will introduce members, guests and staff and will discuss and possibly act on; approval of minutes from the November 9, 1997 meeting; update on the 75th Texas Legislature (bills signed by Governor Bush relating to radiologic technology, Senate Bills 702 and 1517, and House Bill 1534); update on member appointments to committee; update on amendments and rules adopted March 24, 1997, 25 Texas Administrative Code (TAC) §143.et. seq. (Persons Performing Radiologic Procedures); review of interpretive memorandums (Bone Densitometry, Hospital-based Technologists, and Radiologic Technology Students Employed to Perform Radiologic Procedures); subcommittee appointments (Ad Hoc Subcommittee to review 25 TAC §143.17 (Mandatory Training Requirements for Non- Certified Technicians; and new rules relating to mandatory training requirements for RNs and PAs performing radiologic procedures identified in §143.16); Rules Subcommittee; and other subcommittees); proposed amendments relating to the regulation of persons performing radiologic procedures (25 TAC §§14.2 (Definitions; 143.3 (Fees); 143.8 (Examinations); 143.11 (Continuing Education); 143.14 (Disciplinary Actions); 143.16 (Dangerous or Hazardous Procedures; and 143.19 (Hardship Exemptions)); proposed rules (25 TAC §143.16) relating to the regulation of persons performing radiologic procedures (photocopying certificates, approvals and registrations, training requirements for RNs and PAs performing dangerous or hazardous procedures and administrative penalties); matters relating to the regulation of persons performing radiologic procedures which require no advisory committee action; public comment; and an announcement of the next meeting date.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Donna Flippin, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6617.
Filed: August 4, 1997, 10:04 a.m.

TRD-9710078

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Saturday, August 16, 1997, 8:30 a.m.

Room 102 (Lobby), Texas Department of Insurance, 333 Guadalupe

Austin

Medical Radiologic Technologist Advisory Committee, Rules Subcommittee

AGENDA:

The subcommittee will introduce members, guests and staff and will discuss and possibly act on; draft of amendments to rules (25 Texas Administrative Code §§143.9 (Standards for the Approval of Curricula and Instructors); 143.11 (Continuing Education); and 143.16 (Dangerous or Hazardous Procedures)); draft of proposed rules (photocopying certificates, approval letters or registrations, and additional training for RNs and PAs performing radiologic procedures identified in 25 TAC §143.16); matters relating to the regulation of persons performing radiologic procedures not requiring Advisory Committee action; public comment; and announcement of next meeting date.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Donna Flippin, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6617.
Filed: August 4, 1997, 10:03 a.m.

TRD-9710077

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Saturday, August 16, 1997, 9:30 a.m.

Tower Building, Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board, Executive Committee

AGENDA:

The committee will introduce members, guests and staff and will discuss and possibly act on; recommendation for proposed amendments concerning the transportation of radioactive materials *Texas Regulations for Control of Radiation* Part 11, 25 Texas Administrative Code (TAC) §289.201 (General Provisions); *Texas Regulations for Control of Radiation* Part 14, 25 TAC §289.257 (Packaging and Transportation of Radiative Materials); *Texas Regulations for Control of Radiation* Part 21, 25 TAC §289.202 (Basic Standards); *Texas Regulations for Control of Radiation* Part 41, 25 TAC §289.252 (Licensing of Radioactive Materials); and *Texas Regulations for Control of Radiation* Part 44, 25 TAC §289.254 (Waste Processing and Storage); recommendation for draft of rules 25 TAC, Chapter 289 for establishment of a policy on regulation of lasers; items not requiring action; and public comment.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6688.
Filed: August 6, 1997, 9:50 a.m.

TRD-9710223

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Saturday, August 16, 1997, 9:30 a.m.

Room 102 (Lobby), Texas Department of Insurance, 333 Guadalupe

Austin

Medical Radiologic Technologist Advisory Board, Ad Hoc Subcommittee on Training

AGENDA:

The advisory committee will introduce members, guests and staff and will discuss and possibly act on; draft of possible amendments to rules 25 Texas Administrative Code (§§143.17 relating to mandatory training programs for non-certified technicians, and 143.16 relating to

dangerous or hazardous procedures); matters relating to the regulation of persons performing radiologic procedures not requiring Ad Hoc Subcommittee action; public comment; and announcement of next meeting date.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Donna Flippin, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6617.
Filed: August 4, 1997, 10:02 a.m.

TRD-9710076

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Saturday, August 16, 1997, 10:30 a.m.

Tower Building, Room T–607, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board Medical Committee

AGENDA:

The committee will introduce members, guests and staff and will discuss and possibly act on; recommendation for proposed amendments to the *Texas Regulations for Control of Radiation* Part 32, 25 Texas Administrative Code (TAC) §289.227 (radiation machines in the healing arts and veterinary medicine); *Texas Regulations for Control of Radiation* Part 42, 25 TAC §289.226 (registration of machine use and services); *Texas Regulations for Control of Radiation* Part 41, 25 TAC §289.252 (licensing of radioactive materials for medical uses — lymphoscintigraphy); recommendation for draft of rules 25 TAC, Chapter 289, concerning exemptions from using protective devises to be used with mini C-arms regarding X-ray); items not requiring action; and public comment.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6688.
Filed: August 6, 1997, 9:49 a.m.

TRD-9710222

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Saturday, August 16, 1997, 11:30 a.m.

Tower Building, Room T–607, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board Joint Meeting of Uranium and Fee Committees

AGENDA:

The committees will introduce members, guests and staff and will discuss and possibly act on; recommendation for proposed amendments to the *Texas Regulations for Control of Radiation* Part 43, 25 Texas Administrative Code (TAC) §289.260 (uranium), and *Texas Regulations for Control of Radiation* Part 12, 25 TAC §289.204 (uranium fee and penalty for late fees); items not requiring action; and public comment.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6688.
Filed: August 6, 1997, 9:49 a.m.

TRD-9710221

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Saturday, August 16, 1997, 1:30 p.m.

Tower Building, Room T–607, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board

AGENDA:

The board will introduce members, guests and staff and will discuss and possibly act on; approving the minutes from the previous meeting; election of the Secretary of the Board; committee reports (Medical Committee (recommendation for proposed amendments to the Texas Regulations for Control of Radiation Part 32, 25 Texas Administrative Code (TAC) §289.227 on (radiation machines in the healing arts and veterinary medicine); Texas Regulations for Control of Radiation Part 42, 25 TAC §289.226 (registration of machine use and services); Texas Regulations for Control of Radiation Part 41, 25 TAC §289.252 (on licensing of radioactive materials for medical uses — lymphoscintigraphy); and recommendation for protective devices to be used with mini C-arms regarding X-ray); Uranium and Fee Committees (recommendation for proposed amendments to the Texas Regulations for Control of Radiation Part 43, 25 TAC 289.60 on uranium, and Texas Regulations for Control of Radiation Part 12, 25 TAC §289.204 (uranium fee and penalty for late fees); Executive Committee (recommendation for proposed amendments to the Texas Regulations for Control of Radiation related to the transportation of radioactive materials Part 11, 25 TAC §289.201 (General Provisions); Texas Regulations for Control of Radiation Part 14, 25 TAC 289.257 (packaging and transportation of radioactive materials); Texas Regulations for Control of Radiation Part 21, 25 TAC §289.202 (Basic Standards); Texas Regulations for Control of Radiation Part 41, 25 TAC 252 (Licensing of Radioactive Materials); and ; Texas Regulations for Control of Radiation Part 44, 25 TAC 289.254 (Waste Processing and Storage)); report from the chair; program reports (Railroad Commission of Texas; Texas Low-Level Radioactive Waste Disposal Authority, Texas Department of Health, Bureau of Radiation Control; and the Texas Natural Resource Conservation Commission); items not requiring board action; and public comment.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas 78756, (512) 834–6688.

Filed: August 6, 1997, 9:49 a.m.

TRD-9710220

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Texas Statewide Health Coordinating Council

Tuesday, August 19, 1997, Noon

Capitol Marriott, 701 East 11th Street

Austin

AGENDA:

The council will discuss and possibly act on: approval of the minutes of the June 30, 1997 meeting; comprehensive review of 75th session legislation relating to State Health Plan recommendations; presentation from Texas Higher Education Coordinating Board; issues related to Ad Hoc Committee on local health departments and hospital closures and/or reconfigurations; presentation on the Health Professions Resource Center; report on Texas Department of Health implementation of House bill 1716; report on by-laws; bureau report; and setting of the next meeting time and proposed agenda.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Nancy Burkhardt, 1100 West 49th Street, Austin, Texas 78756, (512) 458–7261.
Filed: August 6, 1997, 9:49 a.m.

TRD-9710219

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Texas Higher Education Coordinating Board

Wednesday, August 13, 1997, 10:00 a.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700 Chevy Chase Drive

Austin

Graduate Medical Education Advisory Committee

AGENDA:

Committee Appointments; Charge to Committee; Review Draft of Rules; Consideration of Fiscal Year 1998 Funding; and Other Business.

Contact: Stacey Silverman, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483–6206.
Filed: August 4, 1997, 3:04 p.m.

TRD-9710116

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Texas Department of Insurance

Wednesday, August 20, 1997, 8:30 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–0543F. (454–97–0544.F and 454–97–0985F. Consolidated): Prehearing conference in the Matter of ALLSTATE INDEMNITY COMPANY, ALLSTATE INSURANCE COMPANY AND ALLSTATE PROPERTY AND CASUALTY COMPANY to consider possible disapproval of a private passenger automobile rate filing. (reset from 7–15–97).

Contact: Bernice Ross, 333 Guadalupe Street, M-C #113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: August 4, 1997, 10:11 a.m.

TRD-9710085

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Wednesday, August 20, 1997, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454–97–0517D. In the Matter of NATIONAL IPF, INC. d/b/a EMERALD FINANCE COMPANY (rescheduled from 7/1/97).

Contact: Bernice Ross, 333 Guadalupe Street, M-C #113–2A, Austin, Texas 78701, (512) 463–6328.
Filed: August 4, 1997, 10:11 a.m.

TRD-9710086

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Texas Department of Licensing and Regulation

Thursday, August 14, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the Respondent, Robert Simoneaux, for failing to provide proper installation, service and mechanical integrity to the consumer in violation of the Texas Revised Civil Statutes Annotated Article 8861, §5(a) (Vernon 1993), pursuant to the Texas Revised Civil Statutes Annotated Articles 8861 and 9100, the Texas Government Code, Chapter 2001 (APA), and 16 Texas Administrative Code, Chapters 60 and 75.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463–3192.
Filed: August 4, 1997, 11:41 a.m.

TRD-9710099

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Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Tuesday, August 12, 1997, 2:30 p.m.

Hyatt Regency Hill County, 9800 Hyatt Resort Drive

San Antonio

Executive Committee

AGENDA:

Consideration and possible action on: 1) July 15, 1997 minutes; 2) Vote of shareholders of Guaranty Reassurance Corporation; 3) Guarantee Security Life Insurance Company Plan Amendment Number Two and subsequent opt-in/out of reinsurance agreement; and 4) Next meeting date.

Contact: C. S. LaShelle 301 Congress, #500, Austin, Texas 78701, (512) 476–5101.
Filed: August 4, 1997, 1:47 p.m.

TRD-9710111

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Texas Low-Level Radioactive Waste Disposal Authority

Friday, August 15, 1997, 11:00 a.m., or upon adjournment of the Quarterly Board Meeting

Oriental Room, Eighth Floor, St. Joseph's Hospital

Houston

Board of Directors Legal Oversight Committee

AGENDA:

The meeting will be called to order, then convene in Executive Session to receive the advice of Authority Attorneys under Texas Government Code §551.071 concerning contemplated litigation related to the authority's license application pending before the Texas Natural Resource Conservation Commission and to review invoices for outside legal counsel. The Committee will then open the meeting to discuss Committee Organization and other matters before adjourning.

Contact: Lawrence R. Jacobi, Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451–5292.
Filed: August 6, 1997, 9:48 a.m.

TRD-9710214

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Texas Medical Liability Insurance Underwriting Association (JUA)

Tuesday, September 9, 1997, 3:00 p.m.

6505 IH35 North, DoubleTree Hotel

Austin

Executive Committee

AGENDA:

1. Review and action on Second Quarter 1997 Financial.

2. Report on Evaluation of Loss Control Program conducted by Texas Department of Insurance.

3. Report on action taken by Policyholders Stabilization Reserve Fund Advisory Directors.

4. Review and action on Proposal for Financial Audit for Year Ending December 31, 1997 submitted by KPMG Peat Marwick.

5. Second Quarter 1997 Status Report concerning in-force policies.

6. Report on claims activities including status of mass litigation.

7. Discussion of legislation affecting JUA operations.

8. Discussion of Year 2000 Computer Related Issues

9. Report from Legal Counsel.

10. Adjourn.

Contact: Joe Chilton, 505 E. Huntland Drive, Suite 180, Austin, Texas 78752, (512) 452–4370.
Filed: August 4, 1997, 11:52 a.m.

TRD-9710106

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Wednesday, September 10, 1997, 8:30 a.m.

6505 IH35 North, DoubleTree Hotel

Austin

Board of Directors

AGENDA:

1. Approval of Minute 130 and Minute 131.

2. Review and action on Second Quarter 1997 Financial Statements, Budget and Quarterly Loss Bordereaux.

3. Report on Evaluation of Loss Control Program conducted by Texas Department of Insurance.

4. Report on action taken by Policyholders Stabilization Reserve Fund Advisory Directors.

5. Review and action on Proposal for Financial Audit for Year Ending December 31, 1997 submitted by KPMG Peat Marwick.

6. Second Quarter 1997 Status Report concerning in-force policies.

7. Report on claims activities including status of mass litigation.

8. Discussion of legislation affecting JUA operations.

9. Discussion of Year 2000 Computer Related Issues

10. Report from Legal Counsel.

11. Determine date and location for next meeting.

12. Discussion of arrangements and preparation for next meeting.

13. Adjourn.

Contact: Joe Chilton, 505 E. Huntland Drive, Suite 180, Austin, Texas 78752, (512) 452–4370.
Filed: August 4, 1997, 11:52 a.m.

TRD-9710105

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Wednesday, September 10, 1997, 10:00 a.m.

6505 IH35 North, DoubleTree Hotel

Austin

Annual Meeting

AGENDA:

1. Appointment of a Credentials Committee to determine if a quorum is present.

2. Approval of Minutes of the Twenty First Annual Meeting held September 11, 1996.

3. Chairman's Report.

4. Secretary/Treasurer's Report.

5. General Manager's Report.

6. Election of Board of Directors.

7. Ratification of actions of the Board of Directors and all Committees of the Association for the year September 11, 1996 to September 10, 1997.

8. Adjourn.

Contact: Joe Chilton, 505 E. Huntland Drive, Suite 180, Austin, Texas 78752, (512) 452–4370.
Filed: August 4, 1997, 1:19 p.m.

TRD-9710108

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Wednesday, September 10, 1997, 11:00 a.m.

6505 IH35 North, DoubleTree Hotel

Austin

Board of Directors

AGENDA:

1. Consideration of Appeal by Columbia Rosewood Medical Center concerning purported claim under JUA policy number 00–31–85 and action thereon.

2. Election of Officers.

3. Appointment of Certified Public Accountants.

4. Appointment of Independent Actuary.

5. Appointment of Public Relations Representative.

6. Appointment of Counsel.

7. Determine Annual Expense Fee for calendar year 1998.

8. Adjourn.

Contact: Joe Chilton, 505 E. Huntland Drive, Suite 180, Austin, Texas 78752, (512) 452–4370.
Filed: August 4, 1997, 1:19 p.m.

TRD-9710107

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Texas State Board of Medical Examiners

Wednesday, September 13, 1997, 9:00 a.m.

333 Guadalupe, Tower 3, Suite 610

Austin

Hearings Division

AGENDA:

Termination Request, 9:00 a.m. — Criss Conrad Cross, MD, San Antonio, Tx.

Probation Appearance, 9:30 a.m. — William Warren Prater, MD, Hunt, Tx.

Probation Appearance, 9:30 a.m. — Monte Keith Smith, DO, Gatesville, Tx.

Probation Appearance, 10:00 a.m. — Paul Eugene McLean, II, Gatesville, Tx.

Probation Appearance, 10:00 a.m. — Shelley M. Howell, DO, Temple, Tx.

Probation Appearance, 10:00 a.m. — Brock Allen Morris, MD, Waco, Tx.

Probation Appearance, 10:00 a.m. — Lewis W. Zingery, MD, Austin, Tx.

Probation Appearance, 11:00 a.m. — Robert Byrt Brunken, MD, Dallas, Tx.

Probation Appearance, 11:00 a.m. — Kurt Stuermer Poehlmann, MD, Comanche, Tx.

Probation Appearance, 11:00 a.m. — James Eugene Froelich III, DO, Bonham, Tx.

Probation Appearance, 11:00 a.m. — Thomas Joseph Curvin, MD, Mesquite, Tx.

Probation Appearance, 1:00 p.m. — Fernan Lara, MD, Dallas, Tx.

Probation Appearance, 1:00 p.m. — Cesar P. Gregorio, Jr., MD. Rockwall, Tx.

Probation Appearance, 1:00 p.m. — David Joel Korman, MD, Rusk, Tx.

Probation Appearance, 1:00 p.m. — Ricky Allen McCorkle, MD, Sherman, Tx.

Probation Appearance, 2:00 p.m. — James Robert Winslow, Do, Addison, Tx.

Probation Appearance, 2:00 p.m. — Michael Ernest Truman, DO, Fort Worth, Tx.

Probation Appearance, 2:00 p.m. — George Michael Markus, MD, Richardson, Tx.

Termination Request, 3:00 p.m. — Alexander Sandor Bernath, MD, Sherman, Tx.

Contact: Pat Wood, P.O. Box 2018, Austin, Texas 78768, (512) 305–7016.
Filed: August 5, 1997, 2:02 p.m.

TRD-9710112

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Texas Property and Casualty Insurance Guaranty Association

Thursday, August 14, 1997, 9:00 a.m.

9420 Research Boulevard, Echelon III, Suite 400

Austin

Board of Directors

AGENDA:

The Texas Property and Casualty Insurance Guaranty Association Board of Directors will meet to call the meeting to order, read the Antitrust Statement, hear public participation, approve minutes of the June 26, 1997 Board Meeting, Action Items- Discuss and take possible action on the following: Finance and Audit Committee Report (1. Investment Overview, 2. RFP Update, 3. 401K Pension Review, 4. Request for new bank resolutions); Governmental Affairs Task Force Termination). Informational Items: Executive Committee Report (1. Nominations Process, 2. Office Lease Finalization); Claims and Legal Committee Report (1. Audit Plan of Action); Executive Session — Regulator's/Conservator's Report, Attorney's Report, Personnel Matters; and discuss and take possible action on the items considered in Executive Session.

Contact: Marvin Kelly, 9420 Research Boulevard, Echelon III, Suite 400, Austin, Texas 78759, (512) 345–9335.
Filed: August 6, 1997, 9:02 a.m.

TRD-9710184

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Railroad Commission of Texas

Tuesday, August 12, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1–111

Austin

REVISED AGENDA:

The Railroad Commission will consider and may act on the following item:

Consideration of interagency agreement with the General Services Commission concerning the operation of the print shop from September 1, 1997 through August 31, 1999.

Contact: Lindil C. Fowler, Jr. P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–7033.
Filed: August 4, 1997, 4:53 p.m.

TRD-9710134

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Tuesday, August 12, 1997, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1–111

Austin

REVISED AGENDA:

The Railroad Commission will consider and may act on the following items:

Application by the Sabine Mining Company for approval of 1997 Bond Update for Permit Number 33C (Self-Bond with Third Party Guarantee) Harrison County, Texas.

Whether to recruit a spokesperson for the division's promotional materials and advertisements in fiscal year 1998.

The eligibility requirements for refunds of fees paid on deliveries of imported LPG made before September 1, 1997.

Contact: Lindil C. Fowler, Jr. P.O. Box 12967, Austin, Texas 78711–2967, (512) 463–7033.
Filed: August 4, 1997, 11:42 a.m.

TRD-9710100

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Council on Sex Offender Treatment

Friday, August 29, 1997, 9:00 a.m.

William P. Clements Building, 300 West 15th Street, 15th Floor, Meeting Room

Austin

Clinical Issues Committee

AGENDA:

I. Convene, Collier M. Cole, Ph.D., Chairperson

II. Adoption of the Minutes Postponed till November Meeting

III. Discussion on: Surgical Castration

Civil Commitment/Sexual Predators

Registration/Notification

Juvenile Sex Offender Legislation

IV. New Business

V. Other Business

VI. Public Comment

VII. Adjourn

Contact: Marla Swint, P.O. Box 12546, Austin, Texas 78711– 2546, (512) 463–2323.
Filed: August 6, 1997, 9:49 a.m.

TRD-9710217

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Texas State Board of Social Worker Examiners

Saturday, August 23, 1997, 8:30 a.m.

Omni Hotel, 700 San Jacinto

Austin

Board

AGENDA:

The board will discuss and possibly act on review and/or revisions to the mission and vision statements; and the identification of the critical issues, key tasks and priorities for fiscal year 1997–1998.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least four days prior to the meeting.

Contact: Shirley Bibles, 1100 West 49th Street, Austin, Texas 78756, (512) 719–3521.
Filed: August 4, 1997, 10:01 a.m.

TRD-9710075

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Telecommunications Infrastructure Fund Board

Tuesday, August 26, 1997, 9:30 a.m.

1000 Red River, Room 514E

Austin

Curriculum, Training and Evaluation Committee

AGENDA:

I. Call to Order Open Meeting/Quorum Call-Chairman Joe Randolph

II. Discuss Training Issue with TEA representatives regarding TIF funds.

III. Adjourn Open Meeting

Contact: Dawn Efaw, 1000 Red River, Suite E208, Austin, Texas 78701, (512) 469–3067.
Filed: August 5, 1997, 8:33 a.m.

TRD-9710135

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Texas Department of Transportation

Tuesday, August 19, 1997, 10:00 a.m. (Telephone Conference Meeting)

125 East 11th Street, First Floor, Dewitt C. Greer Building

Austin

Public Transportation Advisory Committee

AGENDA:

In accordance with 43 TAC §1.84(f), Waiver of Preliminary Review of Proposed Rulemaking concerning Federal Rural Expansion and Strategic Priority Projects.

In accordance with 43 TAC §1.84(c), (f), and (g), Waiver or Deferral of Final Review of Proposals Rulemaking concerning Federal Rural Expansion and Strategic Priority Projects.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463–8630.
Filed: August 5, 1997, 4:23 p.m.

TRD-9710176

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The University of Texas System

Wednesday, August 13, 1997, 3:30 a.m. and Thursday, August 14, 1997, 9:00 a.m.

On 8/13–Johnson Room, The Westin Hotel, 13340 Dallas Parkway and 8/14–Galaxy Room 2.602B, Student Union Building, U.T. Dallas, 2601 North Floyd

Dallas and Richardson

Board of Regents and Standing Committee

AGENDA:

To consider Chancellor's docket (submitting by System Administration); Amendments to Regents' Rule and Regulations; Amendment to Guidelines for Periodic Evaluation of Tenured Faculty Trademark Policy; Matters Related to The University of Texas Investment Management Company (UTIMCO); FY 1998 Operating Budgets; Qualified Government Excess Benefit Arrangement for Employees in Optional Retirement Program; Limited waiver of fees for distance learning and off-campus courses; investment and educational purpose fees; admissions policies and criteria for award of scholarships and fellowships; policy on Student Participation in Selection and Monitoring of Food Service Contractors; Adoption of resolution to guarantee payments under a Rolling Owner Controlled Insurance Program; degree programs; Extension of Capital Improvement Program through FY 2003 and Capital Budget for FY 1998 and 1999; buildings and grounds matters including approval of building name and appropriations; real estate matter; and personnel matters as detailed on the attached complete agenda.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701–2981, (512) 499–4402.
Filed: August 5, 1997, 9:26 a.m.

TRD-9710136

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University of Texas Health Science Center at San Antonio

Wednesday, August 13, 1997, 4:00 p.m.

7703 Floyd Curl Drive, Room 422A

San Antonio

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of Minutes

2. Protocols for Review (See Attached)

3. Subcommitttee Reports/Semiannual Review of Programs

4. Other Business

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284–7822
Filed: August 5, 1997, 3:19 p.m.

TRD-9710164

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University of Houston

Monday, August 18, 1997, 2:00 p.m.

S&RII Building, Room 201, University of Houston, 4800 Calhoun Boulevard

Houston

Institutional Animal Care and Use Committee

AGENDA:

To discuss and/or act upon the following:

Approval of June 23, 1997 Minutes

New Products Protocols

Renewal Protocols

Other Business

Contact: Charles Raflo, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743–9191.
Filed: August 6, 1997, 11:17 a.m.

TRD-9710240

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Texas Workforce Commission

Tuesday, August 12, 1997, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; Public Comment; Staff reports and discussion, updates on activities relating to Administration Division, Skills Development and Self-Sufficiency Funds, Unemployment Insurance Division, School-to-Work, Welfare-To-Work/Child Care Programs, and Workforce Division, and other activities as determined by the Acting Executive Director and status report on activities of the Internal Audit Department; Consideration and action on tax liability cases listed on Texas Workforce Commission Docket 33; Discussion, consideration and possible action on acceptance of donation of child care matching funds from Junior League of Odessa, Inc., Kids Unlimited Educational Center, Sylvia Kuvnet Memorial Child Care, Wichita Falls Metropolitan YMCA, Wichita Falls, Metropolitan YMCA Infant and Toddler, Brazoria County Day Care, Child Care. Inc. Metropolitan YMCA Infant and Toddler, Victoria Christian Assistance Ministry, and Catholic Family Services, Inc.,; Discussion regarding new agency organizational structure for monitoring function; Discussion regarding proposed rule relating to the Self Sufficiency Fund and related matters; Discussion of proposed changes to TWC rule relating to the Skills Development Fund (40 TAC §803.1); Discussion of proposed changes to TWC rule relating to charges for copies of public records (Chapter 800, Subchapter C); Presentation, discussion and possible action relating to the Child Care Matching Fund process and the role of Local Workforce Development Boards and the use of lapsing federal funds from fiscal year 1997 for locally matched child care initiatives; Discussion, consideration and possible action on adoption of rule regarding TWC's allocation formula for distribution of funds to Local Workforce Development Area (40 TAC §§800.51–800.60) and related matter; Discussion, consideration and possible action on adoption of rule regarding Child Care (40 TAC §§809.1–800.88) and related matters; Discussion consideration and possible action on adoption of incentive and sanction policy for Local Workforce Boards; Discussion of governance structures for Local Workforce Development Boards and related matters; Discussion of revision of rules related to the TANF employment program; Discussion, consideration and possible action regarding potential and pending applications for certification and recommendations to the Governor of Local Workforce Development Boards for certification; Discussion, consideration and possible action regarding recommendations to TCWEC and status of strategic and operational plans submitted by Local Workforce Development Boards; Discussion, consideration and possible action relating to the Commission's policy and criteria relating to appointment and reappointment of Local Workforce Development board or Private Industry Council nominees; Discussion, consideration and possible action regarding approval of Local Workforce Board or Private Industry Council nominee; Executive session pursuant to Government Code §551.074 to discuss personnel matters with executive staff; Actions, if any, resulting from executive session; consideration and action on whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases, if any; Consideration and action on higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 33; and Set Date of next meeting

Contact: Esther Hajdar, 101 East 15th Street, Austin, Texas 78778, (512) 463–7833.
Filed: August 4, 1997, 3:30 p.m.

TRD-9710124

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Regional Meetings

Meetings filed August 4, 1997

Bell-Milam-Falls Water Supply Corporation, Board, met at Corporation Office, FM 485 West, Cameron, August 7, 1997 at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520–0150, (254) 697–4016. TRD-9710122.

Canyon Regional Water Authority, Regular Board Meeting, met at Guadalupe County Fire Training Facility, 320 Fire Field Road, New Braunfels, August 11, 1997 at 7:00 p.m. Information may be obtained from Gloria Kaufman, 850 Lakeside Pass, New Braunfels, Texas 78130–8233, (210) 609–0743. TRD-9710096.

Canyon Regional Water Authority, Budget Committee, will meet at Guadalupe County Fire Training Facility, 320 Fire Field Road, New Braunfels, August 13, 1997 at 6:30 p.m. Information may be obtained from Gloria Kaufman, 850 Lakeside Pass, New Braunfels, Texas 78130–8233, (210) 609–0743. TRD-9710095.

Central Texas Council of Governments, Emergency Officer and Executive Session meeting, will meet at 302 East Central Avenue, Belton, August 12, 1997, at 10:30 a.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas, 76513, (817) 939–1801. TRD-9710119.

Colorado County Appraisal District, Board of Directors Budget Hearing, will meet at 400 Spring Street, (Grand Jury Room), Columbus, August 12, 1997 at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732–8222. TRD-9710126.

Colorado County Appraisal District, Board of Directors, will meet at 400 Spring Street, Columbus, August 12, 1997 at 2:00 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732–8222. TRD-9710125.

Colorado County Appraisal District, Appraisal Review Board , will meet at 400 Spring Street, (Grand Jury Room), Columbus, August 14, 1997 at 1:00 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732–8222. TRD-9710104.

Jim Wells County Soil and Water Conservation District Board 355, met at 2287 North Texas Boulevard, Suite 5, Alice, August 7, 1997 at 8:00 a.m. Information may be obtained from Albert Garcia, 2287 North Texas Boulevard, Suite 5, Alice, Texas 78332–3110, (512) 668–8363. TRD-9710127.

San Patricio Appraisal District, Board of Directors, will meet at 1146 East Market, Sinton, August 14, 1997 at 4:00 p.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364–5402. TRD-9710101.

Tri County Special Utility District, (SUD), Board of Directors, met at Highway 7 East, Marlin, August 11, 1997, at 7:30 p.m. Information

may be obtained from Patsy Booher, P.O. Box 976, Marlin, Texas 76661, (817) 803–3553. TRD-9710128.

Meetings filed August 5, 1997

Blanco County Appraisal District, 1997 Board of Directors, will meet at 200 North Avenue "G", Johnson City, August 12, 1997 at Noon. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868–4013. TRD-9710145.

Cypress Springs Water Supply Corporation, Board of Directors, will meet at the Office of Cypress Springs Water Supply, 4430 Highway 115, South of Mount Vernon, Texas, August 12, 1997 at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, (903) 860–3400. TRD-9710137.

Dallas Housing Authority, Board of Commissioners, will meet at Melrose Hotel, 3015 Oaklawn Avenue, Dallas, August 14, 1997 at 8:00 a.m. Information may be obtained from Mattye Jones, 3939 North Hampton Road, Dallas, Texas 75212, (214) 951–8305. TRD-9710149.

Elm Creek Water Supply Corporation, Board, met at 508 Avenue E, Moody, August 11, 1997 at 7:00 p.m. Information may be obtained from Rita Foster, P.O. Box 538, Moody, Texas, 76557, (254) 853–3838. TRD-9710144.

Grand Parkway Association, Board of Directors, will meet at 4544 Post Oak Place, Suite 222, Houston, August 14, 1997, at 8:30 a.m. Information may be obtained from L. Diane Schenke, 4544 Post Oak

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Attorney General

Notice of Request for Information

The Office of the Attorney General (OAG) hereby gives notice of a Request for Information (R.F.I.). The purpose of the R.F.I. is to obtain information regarding the various options available for out-sourcing the receipt and disbursement of child support payments received and distributed by the State of Texas pursuant to Title IV, Part D of the Social Security Act described in the following paragraph.

It is the intent of the OAG's Child Support Division to out-source the Receipt and Disbursement Processing Service for approximately 4.4 million child support payments received and distributed annually by the State of Texas pursuant to Title IV, Part D of the Social Security Act in the most efficient and expeditious manner possible. The specific services desired are:

Management of the child support remittance coupons and billings to payers;

Receipt of child support payments;

Depositing funds received into an approved State depository;

Posting child support payment to the OAG's automated child support system;

Problem resolution for specific types of payments;

Disbursement of child support payment through electronic funds transfer, direct deposit; checks, and/ or mailing of state warrants;

Processing of Automated Generated Forms;

Telephone responses to inquiries related to payments; and

Limited file maintenance activities.

This R.F.I. is to obtain information only and does not constitute a formal request to purchase. Estimated pricing information is requested for planning and budgetary purposes only. Should a solicitation result from the R.F.I. it will be made through the Open Market Services Procedure (Title 10 Texas Government Code, Subtitle D, Chapter 2156, subchapter B). If a party, who is not on the Central Master Bid List, wishes to receive a copy of the solicitation document they must request said document in writing pursuant to the Open Records Act (Texas Government Code §552.001 et. seq.).

Copies of the R.F.I. may be requested from: Mr. David Liebich, Purchasing Manager, Office of the Attorney General, 300 West 15th Street, 3rd Floor, Austin, Texas 78701 or by facsimile (512) 397-1607, The request should include the name of the Requestor, the Address of the Requestor, the name of a contact person, and a telephone and facsimile number for that person. Requests for a Request for Information may be sent to the OAG beginning on the date that this notice is published in the *Texas Register*.

The closing date for the receipt of responses will be 3:00 p.m. September 17, 1997.

Issued in Austin, Texas, on August 6, 1997.

TRD-9710236
Suzanne Marshall
Special Assistant Attorney General
Office of the Attorney General
Filed: August 6, 1997

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Texas Commission for the Blind

Notice of Provider Enrollment Deadline Extension

Pat D. Westbrook, Executive Director of the Texas Commission for the Blind, is extending the deadline for responding to portions of the FFY 1998 Independent Living Services Notice of Provider Enrollment that appeared in the July 1, 1997, issue of the *Texas Register* (22TexReg 6231, TRD 9708209). The extension is for the purpose of soliciting additional responses from persons and organizations that can provide "hands-on" independent living skills training to consumers in the following geographic areas: – Lubbock area (Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Gains, Dawson, and Borden Counties); – Houston area (Harris County); The text of the full notice is not being republished.

EXTENDED APPLICATION DEADLINE. All applications must be postmarked no later than September 15, 1997. Applications should be submitted to Glenda Embree, Supervisor of Program Specialists, Texas Commission for the Blind, 4800 N. Lamar, Suite 220, Austin, Texas 78756.

INQUIRIES: To facilitate the process, interested parties are urged to contact the Texas Commission for the Blind with related questions prior to drafting proposals. Inquiries should be directed to Glenda Embree at (512) 459-2583.

Issued in Austin, Texas, on August 3, 1997.

TRD-9710175
Pat D. Westbrook
Executive Director
Texas Commission for the Blind
Filed: August 5, 1997

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following project(s) during the period of August 1, 1997, through August 5, 1997:

FEDERAL AGENCY ACTIONS:

Applicant: Paktank Corporation; Location: San Jacinto Monument State Park, Park Road 1836, south shoreline of the Houston Ship Channel, Harris County, Texas; Project Number: 97- 0237-F1; Description of Proposed Action: The applicant proposes to amend its permit to include an area of the San Jacinto Monument State Park for the placement of dredge material. The area is located northeast of the monument and Park Road 1836, on the south shoreline of the Houston Ship Channel. This is an authorized dredge placement area to restore historic smooth cordgrass marsh; Type of Application: U.S.C.O.E. permit application Number 12314(07) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

Issued in Austin, Texas, on August 6, 1997.

TRD-9710226
Garry Mauro
Chairman
Coastal Coordination Council
Filed: August 6, 1997

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Texas Education Agency

Notice of Correction of Request for Proposals Number and Deadline for Receipt of Proposals

The Texas Education Agency (TEA) published Request for Proposals (RFP) #701-97-023, concerning research and advisement to the Texas Reading Initiative, in the July 25, 1997, issue of the *Texas Register* (22 TexReg 6963). The TEA is correcting the RFP number published in the *Texas Register* from #707-97-023 to #701-97-023. The TEA is also correcting the deadline for receipt of proposals from Friday, August 22, 1997, to Monday, August 25, 1997.

Further Information. For clarifying information about the RFP, contact Robin Gilchrist, Division of Statewide Initiatives, Texas Education Agency, (512) 463-9027.

Issued in Austin, Texas, on August 6, 1997.

TRD-9710213
Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency
Filed: August 6, 1997

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General Land Office

Notice of Availability and Request for Comments on a Proposed Settlement of Natural Resource Damages Claim

AGENCIES: Texas General Land Office, Texas Natural Resource Conservation Commission and the Texas Parks and Wildlife Department; (all Trustees hereinafter referred to collectively as Natural Resource Trustees).

ACTION: Notice of Availability of a proposed settlement and of a 30 day period for public comment on the settlement.

SUMMARY: Notice is hereby given of the following proposed resolution of a claim for natural resource damages under the Oil Pollution Act and applicable state law.

The Natural Resource Trustees have reached an agreement with Higman Barge Lines (Higman) to resolve Higman's liability for injuries to natural resources and the services they provide caused by the discharge of crude oil into navigable waters of the State of Texas.

On September 9, 1996 a vessel owned by Higman discharged approximately 100 barrels of crude oil into the waters of the State of Texas at the confluence of the Brazos River and the Gulf Intracoastal Waterway. Although most of the discharged oil was quickly contained, some oil impacted the shoreline of the Brazos River, resulting in injury to natural resources and their services. Approximately five to seven cubic yards of oiled sand were removed from the shore of the Brazos River.

The proposed settlement requires Higman to compensate for injuries to natural resources by performing a dune restoration project. The project will be performed in accordance with the state beach/dune rules contained in Title 31, Chapter 15 of the Texas Administrative Code, will be constructed using beach quality sand and will consist of a dune using five to seven cubic yards of sand. The dune will

be constructed in Bryan Beach State Park. In addition, Higman will reimburse the Natural Resource Trustees for all costs associated with the response to and assessment of the discharge.

The opportunity for public review and comment on the proposed settlement announced in this notice is required under applicable state law. Interested members of the public may obtain a copy of the proposed settlement by contacting Diane Hyatt, Director, Natural Resource Damage Assessment, Texas General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495, (512) 475-1395.

Interested parties may submit comments to Diane Hyatt, Director, Natural Resource Damage Assessment, Texas General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas 78701-1495, facsimile (512) 463-5367. Written comments received will be considered by the Natural Resource Trustees in finalizing the proposed settlement. Comments must be submitted by 5:00 p.m. September 11, 1997.

Issued in Austin, Texas, on August 5, 1997.

TRD-9710174
Garry Mauro
Commissioner
General Land Office
Filed: August 5, 1997

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Texas Department of Health

Designation of A Site Serving Medically Underserved Populations - Fort Worth, Texas

The Texas Department of Health (department) is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following site serving medically underserved populations: The JPS Health Network - South Campus, 2500 Circle Drive, Suite 100, Fort Worth, Texas 76119. Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Demetria Montgomery, M.D., Chief, Bureau of Community Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; Telephone (512) 458-7771. Comments will be accepted for 30 days from the publication date of this notice in the *Texas Register*.

Issued in Austin, Texas, on August 6, 1997.

TRD-9710227
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 6, 1997

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Texas Department of Health

Notice of Emergency Cease and Desist and Impoundment Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered EFEH and Associates (licensee-L03568) of Houston to cease and desist from working with any licensable quantity of radioactive material. In addition, all licensable quantities of radioactive material in EFEH and Associates' possession must be immediately impounded in place at an authorized storage location, or transferred to an authorized company for storage or disposal. The bureau determined that continued possession and/or use of radioactive material without a valid radioactive material license, and failure to renew the radioactive material license constitute an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau has received, reviewed and approved the actions taken to ensure compliance with Texas radiation control regulations for obtaining a radioactive material license or until the licensee has properly disposed of or transferred the radioactive material.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on August 4, 1997.

TRD-9710073
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 4, 1997

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Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Richard Hernandez, Jr., M.D., P.A., San Antonio, R20019; Clarewood Chiropractic Clinic, Houston, R22090; June A. Meymand, D.C., Dallas, R22286; Stolar Chiropractic Clinic, Inc., Irving, R15960; Medical Clinic of Pasadena, P.A., Pasadena, R05924; Medifirst, P.A., Bryan, R14438; Coppell Creek Medical Center, Coppell, R21521; Total Imaging Systems, Incorporated, Spring, R22102; Kuykendahl Dental Associates, Houston, R13688; Duncanville Surgery Center, Duncanville, Z00589; TAB Medical, Dallas, Z01081.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request

for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on August 4, 1997.

TRD-9710074
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 4, 1997

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Texas Health and Human Services Commission

Public Hearing

Thursday, September 4, 1997, 8 a.m. - 5 p.m.

701 West 51st Street, Winters Bldg., Department of Human Services

Commissioner's Board Room, Room 125 E

Austin

The Texas Health and Human Services Commission (HHSC) is seeking comments from consumers, advocates, health and human services professionals and the general public on the Commission's Six-Year Coordinated Strategic Plan. Registration is scheduled at 8 a.m.. Focus group discussions will begin at 10 a.m., covering issues such as family services, health, long-term care, rehabilitation and service coordination/eligibility. Participants are encouraged to register in advance.

If you require auxiliary aids, services such as sign language interpreters, or materials in alternate format, contact HHSC at least three working days prior to the meeting. For information, please call Conneen Sanders at (512) 424-6629 (Voice), (512) 424-6597 (TDD) or E-mail amon_r@hhsc.state.tx.us.

Issued in Austin, Texas, on August 5, 1997.

TRD-9710146
Marina Henderson
Executive Deputy Commissioner, Legal and Legislative Affairs
Texas Health and Human Services Commission
Filed: August 5, 1997

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Texas Higher Education Coordinating Board

Notice Of Meeting

The Advisory Committee on Women and Minority Faculty and Professional Staff will meet on Wednesday, August 13, 1997 from 10:00 a.m. till 4:00 p.m. The meeting will be held at the Coordinating Board, 7745 Chevy Chase Drive, Building 5 Room 5.209. The agenda is as follows: Review and assess the proven methods for increasing the number of women and minority faculty and administrators as well as measures that must be taken to allow women and minorities to advance to senior positions which were included in the final report of the previous committee; Recommend strategies and procedures for implementation of the findings; and Disseminate this information through publications, colloquia, conferences and other suitable instruments. The committee will conclude its work and report its progress and actions to the Coordinating Board in October 1999. For additional information please contact Dr. Betty James at (512) 483-6140.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710058
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: August 4, 1997

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Houston-Galveston Area Council

Request for Proposal - Development, Calibration and Validation of Advanced Practice Travel Forecasting Models for the Houston-Galveston Region

The Houston-Galveston Area Council (H-GAC) is requesting proposals to assist in the development, calibration and validation of advanced practice travel forecasting models for the Houston-Galveston Region. The advanced practice model set should be more policy sensitive than traditional models to provide better information for addressing the critical issues that face the region. H-GAC proposes that the advanced practice model set address person travel by both motorized and non-motorized modes as well as provide for congestion feedback into the trip distribution and mode choice steps. The consideration of forecastable policy sensitive variables will also be an important priority in the new model set. One area of emphasis in the evaluation of proposals will be background and experience of proposed staff in the development and implementation of advanced practice models for other large urban areas. H-GAC will hold a preproposal meeting Wednesday, August 27, 1997, at 1:30 pm on the second floor of H-GAC offices (Conference Room B), 3555 Timmons Lane, Houston, Texas. The deadline for receiving proposals is Monday, September 22, 1997, at 5:00 pm. Copies of the RFP can be obtained at H-GAC offices, 3555 Timmons Lane, Suite 500, Houston, Texas or from the H-GAC website (www.hgac.cog.tx.us). Questions should be directed to Mr. Andy Mullins at (713) 627-3200 or amullins@hgac.cog.tx.us.

Issued in Houston, Texas, on August 5, 1997.

TRD-9710170
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: August 5, 1997

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for Zurich American Insurance Company of Illinois, a foreign fire and casualty company. The home office is in Schaumburg, Illinois.

Application for admission in Texas for Western General Automobile Insurance Company, assumed name in Texas for Western General Insurance Company, a foreign fire and casualty company. The home office is in Encino, California.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710120
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 4, 1997

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Cardiovascular Disease Management, Inc., a domestic third party administrator. The home office is Dallas, Texas.

Application for incorporation in Texas of Insurance Plans for Members, L.L.C., a domestic third party administrator. The home office is Richardson, Texas.

Application for admission to Texas of Towers Administrators, Inc., a foreign third party administrator. The home office is New York, New York.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710121
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 4, 1997

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Texas Lottery Commission

Request for Proposals

The Texas Lottery Commission (hereinafter the "Texas Lottery") is issuing a Request for Proposals ("RFP") to invite interested vendors to submit proposals to supply the equipment and services required to implement and operate both instant games and on-line games in the State of Texas.

The Texas Lottery is seeking bids on three separate components of Lottery operations. Those components are: On-Line Gaming System and Services, Instant Ticket Gaming System and Services, Instant Ticket Manufacturing.

Interested vendors may submit proposals on all, one, or any combination of the above-listed three components.

The component of On-Line Gaming System and Services includes Instant Ticket validation at the retailer terminal, in addition to maintenance and operation of the terminals, communications system and computer system necessary to operate on-line games.

The Instant Ticket Gaming Systems component includes Sales and Marketing services to support both instant and on-line games, as well as the computer system to support instant games and the warehousing and distribution of instant tickets.

The Instant Ticket Manufacturing component covers the design and manufacturing of instant tickets.

While many of the tasks necessary for the operation of Lottery games in Texas will be performed by outside vendors, control over all functions of the Lottery will be maintained by the Lottery itself, to assure that the games are conducted with the integrity that citizens rightfully expect of a publicly owned and run institution.

Proposers responding to the RFP are expected to provide the Texas Lottery with information, evidence and demonstrations that will permit awarding a contract in a manner that best serves the interests of the Texas Lottery.

This RFP is issued by the Texas Lottery. The Texas Lottery is the sole point of contact with regard to all procurement and contractual matters relating to the services described herein. The Texas Lottery is the only office authorized to clarify, modify, amend, alter or withdraw the specifications, terms and conditions of this RFP and any contract awarded as a result of this RFP.

The time schedule for awarding a contract under this RFP is shown below. The Texas Lottery reserves the right, at its sole discretion, to amend the schedule.

August 12, 1997, (5:00 p.m. CT), Issuance of RFP

August 22, 1997, Letter of Intent to Propose Due (4:00 p.m., CT)

September 12, 1997, Written Questions Due (4:00 p.m., CT)

October 3, 1997, Answers to Written Questions Issued (or as soon as possible thereafter)

October 10, 1997, Follow Up Written Questions Due (4:00 p.m., CT)

October 22, 1997, Answers to Follow Up Written Questions Issued (or as soon as possible as thereafter)

December 1, 1997, Deadline for Cost Proposals (4:00 p.m., CT)

December 3, 1997, Deadline for Proposals (4:00 p.m., CT)

February 18, 1998, Announcement of Apparent Successful Proposer(s) (or as soon as possible thereafter)

March 18, 1998, Announcement of Contract Award(s) (or as soon as possible thereafter).

To obtain a copy of the RFP, please contact: Ridgely C. Bennett, Deputy General Counsel, Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630, or by fax (512) 344-5189.

Issued in Austin, Texas, on August 5, 1997.

TRD-9710182
Ridgely C. Bennett
Deputy General Counsel

Texas Lottery Commission
Filed: August 6, 1997

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North Central Texas Council of Governments

Request for Proposals

CONSULTANT PROPOSAL REQUEST

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG intends to select a consultant to develop specifications for Automatic Passenger Counters for the Dallas Area Rapid Transit (DART).

CONTRACT AWARD PROCEDURES

The firm selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue contract awards.

REGULATIONS

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

DUE DATE

Proposals must be submitted no later than 5 p.m., Central Standard Time, Friday, August 22, 1997, to Edward Owens, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P. O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Edward Owens, (817) 695-9268.

Issued in Austin, Texas, on August 1, 1997.

TRD-9710059
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 4, 1997

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Texas Parks and Wildlife Department

Meeting Regarding State Historical Sites Study

The Texas Parks and Wildlife Department invites the public to a meeting concerning state historic sites. As a part of the meeting, TPWD will respond to recommendations contained in a study of historic sites performed by KPMG Peat Marwick LLP for the Department and the Texas Historical Commission. The meeting will take place on September 10, 1997 from 1:30 to 5:00 PM, in the Commission Hearing Room, Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas, 78744.

The meeting is being held pursuant to provisions of HB 2542, Section 133, enacted by the 75th Texas Legislature. Interested persons seeking additional information about the meeting should contact Dr. Bill Dolman, Texas Parks and Wildlife Department, at (512) 389-4513.

Issued in Austin, Texas, on August 6, 1997.

TRD-9710224
Bill Harvey
Regulatory Coordinator
Texas Parks and Wildlife Department
Filed: August 6, 1997

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Public Utility Commission of Texas

Notice Of Application For Amendment To Service Provider Certificate Of Operating Authority

On August 1, 1997, Local Telephone Service Company, Inc. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60064. Applicant intends to expand its geographic area to include those areas in Texas currently serviced by GTE Southwest, Inc., Lufkin-Conroe Telephone Exchange, Inc., and Fort Bend Telephone Company.

The Application: Application of Local Telephone Service Company, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 17753.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, no later than August 15, 1997. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 17753.

Issued in Austin, Texas, on August 5, 1997.

TRD-9710166
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 5, 1997

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Public Utility Commission of Texas

Notice Of Application for Amendment to Service Provider Certificate of Operating Authority

On August 1, 1997, Texas Dial Tone, Inc., filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted

in SPCOA Certificate Number 60106. Applicant intends to change its corporate name.

The Application: Application of Texas Dial Tone, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 17755.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than August 15, 1997. You may contact the PUC Office of Customer Protection at (512) 936- 7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 17755.

Issued in Austin, Texas, on August 5, 1997.

TRD-9710167
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 5, 1997

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Public Utility Commission of Texas

Notice Of Application To Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 29, 1997, to amend a certificate of convenience and necessity pursuant to §§ 1.101(a), 2.201, 2.101(e), 2.252, and 2.255, of the Public Utility Regulatory Act of 1995. A summary of the application follows.

Docket Title and Number: Application of Lower Colorado River Authority to Amend Certificated Service Area Boundaries (Service Area Exception) in Menard County, Docket Number 17741 before the Public Utility Commission of Texas.

The Application: In Docket Number 17741, the Lower Colorado River Authority requests the service area exception in order to construct the Hext substation in the singly certificated area of McCulloch Electric Cooperative, Inc., near the intersection of Highway 29 and Pope Lane, to enhance the reliability of service to its wholesale electric customers in the area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on August 4, 1997.

TRD-9710123
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 4, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application on August 5, 1997, for a service provider certificate of operating authority (SPCOA), pursuant to §3.2532 of the Public Utility Regulatory Act of 1995. A summary of the application follows.

Docket Title and Number: Application of Mark Alan Welch, d/b/a 900/Ideas, Financial Brokerage Services, and Longhorn Funding Group, for a Service Provider Certificate of Operating Authority, Docket Number 17758 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange telephone services through Southwestern Bell Telephone Company and GTE Southwest, Inc., in the State of Texas.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protections at (512) 936-7120 no later than August 15, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on August 5, 1997.

TRD-9710168
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 5, 1997

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board: City of Grulla, P.O. Box 197, La Grulla, Texas, 78548, received April 15, 1996, application for financial assistance in the amount of $51,114 from the Research and Planning Fund.

City of Roma, 101 Lincoln Street, Roma, Texas, 78584, received December 4, 1996, application for grant/loan assistance in the total amount of $28,973,050 from the State Water Pollution Control Revolving Fund, Water Supply Account and the Economically Distressed Areas Account of the Water Development Fund.

East Cedar Creek Water Supply District, P.O. Box 309, Nabank, Texas, 75147, received June 30, 1997, application for financial assistance in the total amount of $4,570,000 from the State Water Pollution Control Revolving Fund and the Water Supply Account of the Water Development Fund.

City of Bells, 101 North Broadway, Bells, Texas, 75414, received June 27, 1997, application for financial assistance in the total amount of $460,000 from the State Water Pollution Control Revolving Fund and Water Supply Account of the Water Development Fund.

City of Marshall, P.O. Box 698, Marshall, Texas, 75671 received June 30, 1997, application for financial assistance in the amount of $7,020,000 from the State Water Pollution Control Revolving Fund.

Bell County Water Control and Improvement District Number 1, P.O. Box 43, Killeen, Texas, 76540-0043, received July 1,1997, application for financial assistance in the amount of $33,000,000 from the Water Supply Account of the Water Development Fund.

Fort Bend County Fresh Water Supply District Number 1, P.O. Box 190, Fresno, Texas, 77545, received July 1, 1997, application for financial assistance in the amount of $1,000,000 from the Water Loan Assistance Fund of the Water Assistance Fund.

Chimney Hill Municipal Utility District, 22001 Northpark Drive, Kingwood, Texas, 77339-3804, received June 27, 1997, application for financial assistance in the amount of $1,520,000 from the Water Supply Account of the Water Development Fund.

Chisholm Trail Special Utility District, P.O. Box 249, Florence, Texas, 76527, received July 1, 1997, application for financial assistance in the amount of $5,035,000 from the Water Supply Account of the Water Development Fund.

Lakeway Municipal Utility District, 1097 Lohmans Crossing, Austin, Texas, 78734-4459, received June 23, 1997, application for financial assistance in the amount of $3,040,000 from the State Water Pollution Control Revolving Fund.

City of Fate, 105 East Fate Main Place, Fate, Texas, 75132, received August 30, 1996, application for financial assistance in the amount of $1,000,000 from the State Water Pollution Control Revolving Fund.

Haciendas Del Norte Water Improvement District, 9434 Viscount, Suite 350, El Paso, Texas, 79925, received July 8, 1997, application for financial assistance in the amount of $1,675,000 from the Water Supply Account of the Water Development Fund.

City of Donna, 307 South 12th Street, Donna, Texas, 78537, received June 2, 1997, application for grant/loan assistance in the total amount of $19,870,000 from the State Water Pollution Control Revolving Fund, Water Supply Account and Economically Distressed Areas Program of the Water Development Fund.

Fort Bend County Surface Water Supply Corporation, c/o Vinson and Elkins, 2300 First City Tower, 1001 Fannin, Houston, Texas, 77002-6760, received July 16, 1997, application for financial assistance in an amount not to exceed $30,000 from the Research and Planning Fund.

City of Fredericksburg, P. O. Box 111, Fredericksburg, Texas, 78624, received August 4, 1997, application for grant assistance in an amount not to exceed $43,720 from the Research and Planning Fund.

El Paso Water Utilities Public Service Board, 1154 Hawkins Blvd., El Paso, Texas, 79961-0001, received August 7, 1997, application for financial assistance in an amount not to exceed $250,000 from the Border Regionalization Fund.

Maverick County Water Control and Improvement District Number 1, 2252 East Garrison Street, Eagle Pass, Texas, 78852, received July 17, 1996, application for grant assistance in the amount of $5,010 from the Agricultural Conservation Grants to Districts Program.

Hemphill Soil and Water Conservation District, 5th and Main Street, Canadian, Texas, 79014, received November 19, 1996, application for grant assistance in the amount of $12,000 from the Agricultural Conservation Grants to Districts Program.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas, 78711.

Issued in Austin, Texas, on August 6, 1997.

TRD-9710225
Craig D. Pedersen
Executive Administrator
Texas Water Development Board
Filed: August 6, 1997

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